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# Monthly Report



ONTARIO LABOUR RELATIONS BOARD





ONTARIO LABOUR RELATIONS BOARD REPORTS

A Monthly Series of Decisions from the  
Ontario Labour Relations Board

Cited [1975] OLRB REP.





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(INADVERTENTLY OMITTED FROM THE OCTOBER 1974 MONTHLY REPORTS. )

6379-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 91 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. OTTOR FREIGHTWAYS LIMITED (Respondent).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members D.B. Archer and W. H. Wightman.

APPEARANCES AT THE HEARING: I.J. Thomson for the applicant; Roy C. Fillion, G.L. Flannigan and Bob Kerr for the respondent.

DECISION OF THE BOARD: October 28, 1974.

1. This is an application for certification.

2. However, at the outset of the hearing the respondent challenged the jurisdiction of the Board to entertain the application. Counsel to the respondent argued that the basis to this objection was founded upon two principles of constitutional law. The first principle proposed was that the Ontario Labour Relations Act does not apply to an undertaking - that connects Provinces - a principle distilled from sections 91(29) and 92(10)(a) of the British North America Acts, 30 and 31 Victoria, c. 3. Accordingly it was submitted that the respondent's business constituted such an undertaking. Secondly, it was submitted that the regulation of the labour relations of railways was within the exclusive jurisdiction of the Federal Government, or at the very least, it now did in that Parliament had by virtue of the Canada Labour Code, occupied the field. Moreover, this legislation, it was submitted, applies to all undertakings integrally related to the railways. This second principle was said to be derived from sections 91(29) and 92(10)(a) of the British North America Act in light of the Stevedores' case reported sub nom. Reference re Validity of Industrial Relations and Disputes Investigation Act (Can.), and Applicability in Respect of Certain Employees of Eastern Canada Stevedoring Co., [1955] 3 D.L.R. 721, S.C.R. 529; and it was submitted that the respondent's business was an undertaking integrally related to railways.

3. It was argued that the respondent's operation is characterized as what is known as a freight forwarding or pool car operation. The company's primary business activity is to forward freight from the Toronto area to the Ottawa area - the latter area including a twenty mile radius of the City of Hull in the Province of Quebec. To this end the company operates terminals in both Toronto and Ottawa and these terminals are located on property belonging to Canadian Pacific Railway but the premises are leased to the respondent. Clause 4 of the lease reads:



"4. That the said premises shall be used by the Lessee for the purpose of pool car operations and for no other purpose whatsoever. The Lessee will, insofar as the Lessee can legally control the same, cause all freight shipped to or from the said premises to be shipped over the railway of the Lessor, or of the Lessor and its connections."

4. Thus the company employs a number of workers in Toronto and Ottawa in the capacity of combination truck drivers and dockworkers. They go out in company owned vehicles in the Toronto area to pick up freight from the customers of the company. Then this freight is brought into the Toronto terminal, unloaded and transferred onto trains that are going to the Ottawa terminal. At the Ottawa terminal, when the freight is received, the process is reversed. The freight is placed on company owned vehicles and delivered to locations in the Ottawa area, including the City of Hull and a twenty mile radius therefrom. The respondent can deliver this freight into the Province of Quebec because of an extra provincial licence granted by Ontario authorities and a reciprocal licence granted by Quebec authorities. Both licences were filed with the Board.

5. This application is in relation to the Ottawa terminal and at this terminal the company employs seventeen workers who operate thirteen of the fifteen trucks owned by it. Of the seven of these trucks that proceed on regular daily delivery runs, one truck makes regular deliveries to the Hull area. Another six trucks handle special bulk shipments that require few stops and it was agreed that each one of these trucks makes deliveries in the Province of Quebec on a fairly regular basis serving such customers as E.B. Eddy in Hull and CIP in Point Gatineau. In terms of overall tonnage, the Board was informed that seventy-five per cent of the total tonnage handled never leaves the Province of Ontario, or conversely, twenty-five per cent of the total tonnage goes to the City of Hull area in the Province of Quebec.

6. Having regard to both the representations made by the parties and the applicable constitutional principles, this Board finds that it lacks jurisdiction. But in making this finding we accept only the first argument submitted by the respondent - that its business is an undertaking connecting provinces. Thus in relation to the respondent's second submission the Board rules that the respondent's business is not "integrally related to railways" within the meaning of that phrase as expressed by the authorities.

7. Our reasoning now follows. Toronto Electric Commissioners v. Snider [1925] A.C. 396 conclusively established that presumptively labour relations is simply an aspect of "property or civil rights in the Province" under section 92(13) of the British North America Act. But Eastern Canada Stevedoring Co. case, supra, some thirty years later, sketched a limited dominion role in labour relations. Since this case it has been accepted that Parliament has jurisdiction over labour relation "not in it's own right, but rather as an implication of dominion regulatory jurisdiction over the undertakings which are within the scope of section 91 of the British North America Act"; (see Arrow Transfer Company and Canadian Association of Industrial, Mechanical and Allied Workers, Local 1 (B.C.) and General Truckdrivers and Helpers Union, Local 31 [1974] 1 Canadian LRBR 29 (British Columbia Labour Relations Board)). Accordingly, section 92(10)(a) of the British North America Act provides that each Province has exclusive jurisdiction in regard to:

Local works and undertakings other than such as are of the following classes:-

- (a) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province;

And section 91(29) of the British North American Act Parliament has exclusive authority in relation to:

Such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Hence Parliament enacted the Canada Labour Code R.S.C. 1970, c. L-1 and section 108 of this Act reads:

This part applies in respect of employees who are employed upon or in connection with the operation of any federal work, undertaking or business and in respect of the employees of all such employees in their relations with such employees and in respect of trade unions and employers' organizations composed of such employees or employers.



8. Thus, relying upon Attorney-General for Ontario et al v Winner et al, Winner et al v S.M.T. (Eastern Ltd. et al [1954] 4 D.L.R. 657 (J.C.P.C.); Regina v Manitoba Labour Board ex parte Invistus Ltd. (1968), 65 D.L.R. (2d) 517; Re Tank Truck Transport Ltd. (1961), 25 D.L.R. (2d) 161; and Regina v Cooksville Magistrate's Court, ex parte Liquid Cargo Lines Ltd. (1965), 46 D.L.R. (2d) 700, we rule that the respondent's business is an undertaking that connects the Province of Ontario with the Province of Quebec and its labour relations is therefore regulated by the Canada Labour Code. In coming to this conclusion we have not focused on what the various trucking licences empower the respondent to do but rather what it actually does; (see Re Tank Truck Transport Ltd., supra, p. 667; Invistus Ltd., supra, p. 526); and the test of what it does relates to the continuity and regularity of its interprovincial activity and not to the percentage of total volume that activity represents; (see particularly Re Tank Truck Transport Ltd., supra, p. 166; Liquid Cargo Lines Ltd., supra, p. 703). In other words the primary function of the respondent's business need not have an interprovincial flavour. Rather, to connect Provinces, it need only engage in interprovincial activity on a "continuous and regular basis" - a phrase that has been applied to one trucking company that hauled only 1.6% of its loads to or from points outside of Ontario (Liquid Cargo) and to another company where the percentage of such total trips amounted to only 6% (Tank Truck). It therefore is a little late in the day to be forging new approaches or perspectives in this area no matter how strongly one disagrees with the court pronouncements. More importantly, this test is not in any way based on which labour relations board can most conveniently regulate the labour relations of an employer. In other words, the fact that all of the employees reside within Ontario and primarily work in this Province is of no relevance to the application of the constitutional law principles; (see Tank Truck Transport Ltd., supra, p. 173). Nor does the test consider the extent of extra territorial penetration of any particular significance unless the allegation is made that the extra provincial activity is really a subterfuge to escape the provincial labour relations laws. (In this regard see the Winner case, supra, p. 680-1; Tank Truck Transport Ltd., supra, p. 168; and Dry Bulk Forwarders Ltd., File No. 5891-74-R.) Accordingly, the Canada Labour Relations Board has asserted jurisdiction even where the extent of interprovinciality is a bus service servicing both the cities of Ottawa and Hull; (see Canadian Brotherhood of Railway Employees and Other Transport Workers and Hull City Transport Limited, Hull, Que. and Hull City Transport Employees' Syndicate, 52 CLLC 16,601).

9. Therefore the Board must dismiss this application on the preceding basis and this basis alone. We would note that this has been the foundation to all the preceding Board decisions involving freight forwarding companies save for General Truck Drivers' Union, Local 938 and H'WK Forwarding Ltd. [1970] OLRB M.R. p. 1450; (See General Truck Drivers' Union, Local 938 and Hendric and Co. Ltd. [1965] OLRB M.R.

p. 646; Canadian Transportation Workers Union #197 and Wilson's Truck Lines Ltd. and General Truck Drivers' Union, Local 938 [1970] OLRB M.R. p. 204; Teamsters Local Union 879 and Crown Moving and Storage, operated by Donald W. Murray Movers Ltd. [1973] OLRB M.R. p. 119; and David Beaton v General Truck Drivers' Union, Local 938 and Consolidated Fastfrate Ltd. [1974] OLRB M.R. p. 269), and with all due respect, we cannot accept the reasoning outlined in the H'WK Forwarding Ltd., decision supra, and cannot do so for the following reasons.

10. The panel in H'WK Forwarding Ltd. did not focus on the intrinsic interprovinciality of the company's activities in that case (and the nature of the business in that case did extend outside of Ontario on a regular basis) but rather rested its reasoning upon the Eastern Canada Stevedoring Co. case, supra, holding that the employees of the freight forwarder were integrally related to railways and railways are a federal undertaking in their own right. And, in fact, this is the second "leg" to the respondent's argument in the application before us today in that, Mr. Filion, counsel to the respondent, relied upon the H'WK Forwarding Ltd. case, supra, as well as a more recent case of the Board - Teamsters Union, Local 938 and Centeast Auto Terminal Ltd. and Canadian Brotherhood of Railway, Transport and General Workers [1974] OLRB M.R. 67, (a case which we believe correctly applied Eastern Canada Stevedoring Co., supra, but a case involving facts that are substantially different than those before us). But, we believe that when the constitutional law test in this area is applied to a freight forwarder's operation that exists solely within a Province, it cannot be said that such an activity forms an integral part of and is necessarily incidental to the operation of a railway as defined under the exceptions to "local works and undertakings" in section 91(10)(a) of the British North America Act. Rather we believe that, while none are on all fours with the facts at hand, cases like Murray Hill Limousine Service Limited v Sinclair Batson et al 66 C.L.L.C. 14,143; Re Colonial Coach Lines Ltd. et al and Ontario Highway Transport Board et al (1967), 62 D.L.R. (2d) 270; Underwater Gas Developers Ltd. v Ontario Labour Relations Board et al (1960), 24 D.L.R. (2d) 673; Bachmeier Diamond and Percussion Drilling Co. Ltd. v. Beaverlodge District of Mine, Mill and Smelter Workers' Local Union Number 913 (1962), 35 D.L.R. (2d) 241 (Sask. C.A.); and Teamsters International Union Local 990 and North Shore Supply Co. Ltd., File No. 5791-74-R, more appropriately describe the relationship of freight forwarders vis-a-vis the railways - the relationship is one of convenience to freight forwarders and of an incidental or tertiary benefit to railways.

11. In Eastern Canada Stevedoring Co., supra, the company's operations consisted exclusively of services rendered in connection with the loading and unloading of ships, pursuant to contracts with seven shipping companies and the work was carried on under the authority and supervision of the ships' officers. Therefore, the work that was being done was something that the companies engaged in the federal undertaking (navigation and



shipping) had to have done for them and to this end they contracted another company and that company thereby became integrally related to them. Similarly in Centeast Auto Terminal Ltd., *supra*, the Canadian National Railway had contracted with foreign automobile manufacturers to transport their automobiles to customers in Canada. And obviously, to fulfil this obligation Canadian National Railway had to unload and store the vehicles until they were picked up. But Canadian National Railway contracted out this integral function of their railway responsibility to a specialized concern, and the Board found, by reason of this contract - a contract that was a necessary aspect of the railway's business - that the specialized concern had become an integral part of and necessarily incidental to Canadian National Railway.

12. However, in the case before us Canadian Pacific Railway has not sought out the respondent and engaged it to perform an integral aspect of the railway's responsibilities. Rather, the respondent is primarily engaged in servicing its own customers (i.e., delivering their goods, etc.) and it has chosen to do this, in part, by rail as opposed to "over the road". Therefore while Canadian Pacific Railway obviously enjoys such patronage it is in no way an integral part of its operations. It is convenient but is in no way necessary or integral to the operation of a railway. In other words while it is convenient to the railways to have only one customer the primary purpose or benefit of freight forwarding is to serve the many customers who deal with the freight forwarders, and therefore the benefit flowing to the railways is only of a tertiary nature. (This perspective is very nicely developed in relation to airline limousine services in Re Colonial Coach Lines Ltd. et al and Ontario Highway Transport Board et al, *supra*, p. 277.) Accordingly an enterprise cannot parasitically and unilaterally make itself an integral part of a federal undertaking unless it is performing a service that is of a primary value to that undertaking and requested by the federal undertaking on that basis. In the facts before us the respondent has merely agreed to transport its customers' goods to some other geographical point and has elected to do this by rail. It could have elected to do it by truck or by air but chose the rail. This election is to its own benefit and convenience and is not an integral part of Canadian Pacific Railway's activities. (Canadian Pacific Railway is only a passive medium in the relationship with the respondent.)

13. Or another way to phrase this same perspective is to examine the primary purpose and function of the respondent's business. This perspective forces one to look to the respondent's customers - not to Canadian Pacific Railway. The respondent delivers matters to and from railroad terminals for the customers - not the railroad. In other words its primary value, or nature of the respondent's business, is that of a parochial delivery agent and only incidentally does the railroad become involved. It is this perspective which distinguishes these facts



from Letter Carriers' Union of Canada v Canadian Union of Postal Workers and M & B Enterprises Ltd. [1974] 1 W.W.R. 452 (S.C.C.), where a trucking firm had been engaged by the Canada Post Office to handle and collect mail. There the company was working for the Canada Post Office performing one of its functions and the company was therefore an integral part of that activity; (see also City of Kelowna v Labour Relations Board of British Columbia and C.U.P.E., Local No. 338, 74 C.L.L.C. 14,207 (B.C.S.C.). Whereas had the arrangement been one of numerous customers asking the trucking firm to deliver mail to the Post Office the relationship with the Post Office would have been quite collateral or secondary.

14. Finally, and alternatively, were it not for the interprovincial aspect of the respondent's business the use of rail solely within a Province, in the context of freight forwarding, would have to be analogized to navigation and shipping that is solely intraprovincial and the latter has been held to be of a purely local nature within the exclusive jurisdiction of the Provinces; (see discussion of this point in relation to Eastern Canada Stevedoring in Underwater Gas Developers Ltd. v Ontario Labour Relations Board et al, supra, p. 680). In fact the actual wording of section 92(10) (a) of the British North America Act envisages railways and railway activity that connects Provinces. And because the respondent has contracted with Canadian Pacific Railway to service its (the respondent's) customers instead of the other way around, one would only describe the respondent's operation in this context (ignoring the City of Hull service for the moment) as intraprovincial railroading (see City of Montreal v. Montreal Street Railway (1911), 1 D.L.R. 681). Therefore the mere intraprovincial annexation to a railroad is an insufficient relationship to affect the jurisdiction of this Board.

(INADVERTENTLY OMITTED FROM THE NOVEMBER 1974 MONTHLY REPORTS).  
 6122-74-R: Hotel and Restaurant Employees Union, Local 743 (Applicant) v. PONDEROSA STEAK HOUSE (A DIVISION OF FOODEX SYSTEMS LIMITED) (Respondent) v. Group of Employees (Objectors).

BEFORE: D.D. Carter, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: H. Caley and K. Brown for the applicant; E.T. McDermott and James Metrakos for the respondent; P.M. O'Neil for the objectors.

DECISION OF D.D. CARTER AND O. HODGES: November 1, 1974.

. . .

2. The applicant seeks to be certified as bargaining agent for certain of the respondent's employees at this Ouellette Avenue store in Windsor. At the commencement of the hearing, the applicant amended

its application by proposing two bargaining units for the employees at the Ouellette Avenue location, one for part-time employees and one for full-time employees. This amendment, recognizing the previous practice of the Board of distinguishing part-time employees from full-time employees, was not disputed. Further, there was no dispute over the proposed exclusions from the bargaining unit. The respondent, however, did dispute the single location bargaining units proposed by the applicant, contending that the appropriate bargaining unit should encompass the employees at its two locations in Windsor, the Ouellette store and a store on Tecumseh Road. The group of objecting employees through their counsel, indicated that they did wish to make representations on the appropriateness of the units proposed by the applicant.

3. The respondent operates a chain of fast-food restaurants located throughout Canada, with 37 of its 56 stores located in Ontario. A very high degree of standardization characterizes the respondent's operation. Its stores have a similar physical appearance, a similar internal layout, and are run according to a standard operating procedure. The respondent's operation is organized into five regions. In turn, these regions are further divided into areas comprising a number of stores. The two Windsor stores belong to both the central region west and an area that includes a store in Chatham and a store in Sarnia.

4. There are approximately 52 employees employed at the Ouellette Avenue store, and most of these employees are employed on a part-time basis. The part-time employees are predominately high-school students who, on average, work 15 hours per week. Approximately two-thirds of these part-time employees are female. The evidence indicates that the part-time staff at each store are drawn from the area immediately surrounding that store, since these employees are either not able, or willing, to commute any great distance. The two Windsor stores are located five miles apart.

5. Due to the standardization of the operation, the same type of work is performed at all of the respondent's stores. Terms and conditions of employment at each store are also similar, since the store managers have to work within a standard personnel policy. The respondent's wage policy requires managers to hire new employees at the minimum wage, although the manager does have the discretion to increase wages by up to 25¢ above the statutory minimum without having to consult the area supervisor. The provision of uniforms, a meal allowance, and certain prizes, are also standard throughout the organization. In addition, all of the respondent's employees are subject to a standard set of rules.

6. The store managers of the individual stores do, however, have some discretion in determining conditions of employment. In addition to the small discretion to grant wage increases, the managers have the

responsibility for the assignment of work and the granting of leaves of absence. As well, the managers have a power to discipline employees, although it would appear that in a case where discharge is being considered they are required to consult with their area supervisor.

7. The interchange of personnel between the two Windsor stores has been limited. The first incident of interchange occurred upon the opening of the Tecumseh store. At that time, certain employees were transferred from the Ouellette store to the Tecumseh store, after having worked two to three weeks at the Ouellette operation. The evidence indicated that the employees were being trained at the Ouellette store prior to the opening of the Tecumseh operation. Four incidents of interchange occurred as a result of social occasions planned by one or other of the two stores. In those situations, the staff from one store would cover for the staff of the other store, so that the latter group would all be free to attend the social occasion. In addition, during the period that both stores have operated (approximately two years), there were six incidents of employees moving from one store to the other. At least one of these incidents was a case of re-employment, not a transfer, and the other cases involved a transfer at the request of the employee, either because the other store was more favourably located for the employee or because the other store offered a better job. The final incident of interchange took place on July 25 and July 30 of this year when a two way exchange occurred between the two stores, three of the Ouellette employees going to Tecumseh and three of the Tecumseh employees going to Ouellette. This exchange, allegedly for the purpose of training the employees, occurred at about the same time that this application was made. There was no evidence of this type of training arrangement having been made on any previous occasions. In view of these circumstances, the Board can attach no weight to this final incident of interchange.

8. Other evidence was given concerning the relationship of the two Windsor stores. The employees of the two stores did mix socially on a few occasions when joint sporting events, or parties, were held. Managerial personnel were also moved from one store to the other, as they advanced within the respondent's organization. There was also some exchange of product between the two stores when a shortage of inventory developed.

9. The issue in this case is whether each of the bargaining units proposed by the applicant is "the unit of employees that is appropriate for collective bargaining." This determination, to a large extent, involves a consideration of the facts of the individual application, but there are some general themes to provide guidance. These general themes, rooted in the Labour Relations Act, have been developed over the years through the decision-making process of this Board. Two themes of fundamental importance appear to emerge from these sources, the right of self-organization and the need for a viable collective bargaining relationship.



10. A primary theme set out in the Labour Relations Act, and affirmed by the Board, is the principle of freedom of association. The preamble to the Act makes it clear that it is the intention of the Legislature to encourage collective bargaining "between employers and trade unions as the freely designated representatives of employees." More specifically, section 6(1) of the Act expressly provides that the wishes of the employees as to the appropriateness of the unit are to be considered by the Board. In other words, the Act recognizes that it is desirable that employees be able to organize in a form that corresponds with their own wishes. Given this legislative policy favouring the right of self-organization, the Board must be careful that its determination as to the appropriateness of the bargaining unit has given proper weight to the wishes of the employees. An earlier decision of the Board, The Board of Education for the City of Toronto, July OLRB Monthly Report 430, clearly endorses such an approach. In giving due consideration to the wishes of the employees, the Board, in the absence of contrary evidence must assume that their wishes are expressed by the applicant union as the representative of the employees. This point was made by the Board in Board of Health of the York-Oshawa District Health Unit, 1969 June OLRB Monthly Report 340.

11. The right of self-organization, however, must at times compete with the need for viable and harmonious collective bargaining. Section 6 of the Act specifically requires the Board to determine, not just a unit of employees, but "the unit of employees that is appropriate for collective bargaining." In other words, the Board has a responsibility under the Act to create a rational and viable collective bargaining structure, even though the exercise of this responsibility may sometimes conflict with the right of self-organization. This responsibility was recognized by the Board in the McMaster University case, 1973, February OLRB Monthly Report 102, and in the Board of Education for the City of Toronto case, *supra*.

12. The determination of what constitutes a viable collective bargaining structure requires the Board to consider matters of industrial relations policy, such as community of interest and fragmentation of employees. Community of interest may be a requisite for viable collective bargaining, since the representation of disparate employee groups by one bargaining agent may put impossible strains upon it as it performs its role in the bargaining process. At the other extreme, a too narrow definition of community of interest may create undue fragmentation of employees, leading to a weak employee presence at the bargaining table, or the possibility of jurisdictional disputes among competing bargaining groups. It should be observed, however, that the Act does not create any presumption in favour of the most comprehensive unit of employees, even though these employees may have a community of interest. Section 1(1)(b) of the Act states that: "'bargaining unit' means a unit of employees appropriate for collective bargaining, whether it is an employer unit or a plant unit or a subdivision of either of them."

This provision makes it quite clear that the determination of appropriateness does not always lead to the conclusion that the most comprehensive unit is also the most appropriate unit. Consideration of the wishes of employees, and of industrial relations policy, may very well dictate that a smaller bargaining unit is the appropriate unit. This point was clearly made in Board of Education for the City of Toronto case, supra.

13. These themes must now be applied to the facts of the instant application. The applicant union has proposed two bargaining units at the Ouellette location, one for the full-time employees and one for the part-time employees. It is clear that this proposal reflects the form in which the employees have organized themselves. There was no other evidence before the Board to indicate that the employees had organized themselves in some other pattern and, in fact, the group of objecting employees chose not to make any representation as to the appropriate bargaining unit. Accordingly, the Board must treat the applicant's proposal as reflecting the wishes of the employees.

14. The Board, having considered the wishes of the employees must now consider the other factors that are relevant to its determination of whether the proposed bargaining units are appropriate. The factors considered at this second stage are: 1) the community of interest among the employees in the proposed unit; 2) the dangers of fragmenting employees for collective bargaining purposes. The elements of community of interest have been set out by the Board in the Usarco case, 1967 September OLRB Monthly Report 526. In that case, the Board in examining the community of interest considered the following elements: 1) the nature of work performed; 2) conditions of employment; 3) skills of employee; 4) administration; 5) geographic circumstances. The evidence clearly indicates that the nature of the work performed, the conditions of employment, and the skills of the employees are very similar at the two Windsor locations. On the other hand, due to the standardization of the respondent's operation, these elements are substantially similar at all its locations in Ontario, and in Canada. This means that these elements cannot by themselves conclusively determine the matter of community of interest. As far as the element of administration is concerned, it is clear that the two stores in Windsor are not administered as one unit. Rather, the single store forms the first rung of the respondent's organization ladder, the second rung being the area encompassing the Sarnia store, the Chatham store and the two Windsor stores. Consideration of the element of administration indicates that the community of interest exists among employees of a single store or among employees within the area, and not among the employees of the two Windsor stores. In this case, the element of geographic circumstances also assumes importance. The two stores are located five miles apart, and it is quite clear that each store draws upon the available labour force in the immediate vicinity, at least in respect of the part-time employees. Thus, to a substantial extent, each store is drawing upon a different

pool of labour in the Windsor area. In these circumstances, there is likely to be far less communication between employees of the two stores and, consequently, a diminished community of interest. Although the employees at the two stores may have mingled on the odd social occasion, it is clear that there is virtually no communication between them during hours of work. The Board concludes that the employees at the Ouellette store have a community of interest distinct and separate from the employees at the Tecumseh store.

15. The respondent in its argument stressed the dangers of fragmenting its employees into separate bargaining units. Although the danger of fragmentation is a relevant consideration, it must be established not only that fragmentation will occur, but also that this fragmentation will impair the collective bargaining process. In this case, the respondent has not established this latter point. The facts indicate that interchange of employees between the two stores is minimal, most of it being of a one-way nature. Although there is also some interchange of product and managerial people, this type of interchange does not affect the collective bargaining process. The Board considers that the evidence presented by the respondent does not point to a sound industrial relations justification for denying the units proposed by the applicant.

16. Accordingly, after considering the evidence in this case, the Board finds that the two units proposed by the applicant are the units of employees that are appropriate for collective bargaining.

17. At the hearing, the Board indicated that, once it had determined the appropriate bargaining units, it would reveal the membership position of the applicant. Unfortunately, the Board does not now have complete information on the breakdown of full-time and part-time employees, so that it is unable to indicate the membership position of the applicant.

18. The Registrar is directed to relist this matter for a hearing on all outstanding issues.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: November 1, 1974.

I dissent.

I have had an opportunity of perusing the decision of the majority but regret that I am unable to agree with their conclusions and their reasoning therefor.

The respondent union seeks certification for certain of the respondent's employees at its Ouellette Avenue store in Windsor. In addition to the Ouellette Avenue store, there is another store of the respondent in Windsor known as the Tecumseh Road store. The applicant union does not seek certification for the employees of this latter



store and, indeed, filed no membership evidence on behalf of the employees of such latter store.

The respondent company submitted that the appropriate bargaining unit should encompass the employees at the two locations in Windsor.

There also appeared at the initial hearing a number of objecting employees and the majority has correctly recorded that this group of objecting employees indicated that they did not wish to make representations on the appropriate bargaining unit. What is not recorded by the majority, however, is that their objection was not concerned with the appropriateness of the unit; it was rather that they did not wish the applicant union to represent them in any unit. In my respectful opinion, therefore, their lack of participation in the question of appropriateness is not determinative of anything. Indeed, when they signed a statement of desire objecting to representation by the applicant union and filed their objection with the Board, one may assume that the question of the appropriate geographic bargaining unit was never a question of their consideration.

In a general way, the policy of the Board is to grant an applicant union certification for a metropolitan area, even if there be only one undertaking of the respondent in that area. Should the respondent company subsequently open additional undertakings in such metropolitan area so certified, such additional operations are "swept" into the certificate and create an accretion to the bargaining rights. This is done by the Board without obtaining the desires of the new employees who staff the new undertakings which are subject to the broader, accreted certificate.

From an equitable standpoint, therefore, one would think that the converse of this proposition, enunciated by the Board, would be that where there is more than one undertaking present at the date of application in a metropolitan area, the applicant union should be obliged to apply at one time for all employees in the metropolitan area, rather than being allowed to organize and apply in a piecemeal fashion. This latter principle would seem to find little merit in the determinations of the majority.

The majority has set forth in its decision what it considers to be the two contesting themes present in this case, viz, the right of "self-organization" (a term which I find completely puzzling in the context in which it is used by the majority) and the need for a viable collective bargaining relationship. To buttress its findings, the majority has referred to the provisions of section 6(1) of the Act and suggest that the wishes of the employees as to the appropriateness are to be considered by the Board. While I cannot quarrel that the desires of the employees as to appropriateness are to be considered, I quare how such desires have been considered in the present case.

Section 6(1) of the Act states:-

6.-(1) Upon an application for certification, the Board shall determine the unit of employees that is appropriate for collective bargaining, but in every case the unit shall consist of more than one employee and the Board may, before determining the unit, conduct a vote of any of the employees of the employer for the purpose of ascertaining the wishes of the employees as to the appropriateness of the unit.

Wherein in the present case, has the Board attempted to ascertain the wishes of the employees as to the appropriateness of the unit by conducting a vote of the employees? It has just not happened.

Indeed, I would find that the wishes of the employees could only be ascertained when that very question had been put to such employees. There is absolutely no evidence that that has been done in this case.

Indeed, rather than the employees indicating their wishes on appropriateness, I would suggest that it is the applicant trade union which has attempted, and (in view of the majority decision) succeeded in indicating the appropriateness, because it has completed its organization only at the Ouellette Avenue store and has been unsuccessful, either from a lack of effort, or from a lack of success, in organizing the employees at the Tecumseh Road store.

Neither should the waters be muddied in this situation by suggesting that the employees wish the unit confined to the Ouellette Avenue store merely because the employees who joined the union happened to be employees of the Ouellette Avenue store.

This suggestion, which underlies the majority decision, is, in my opinion, without foundation. The majority must be reminded that the employees apply for membership only in the union, and not in the union at a particular location. That being so, how is membership in a trade union determinative in any way of the wishes of employees as to the appropriateness of a unit, a question which would never be a consideration when signing with the trade union. For this signing into membership to be indicative of a desire to be represented by the union in a particular geographic unit, I would suggest that the employees would have to have the question put squarely to them.

I am in agreement with the majority that the Board has a responsibility under the Act to create a rational and viable collective bargaining structure based on such matters as industrial relations policy, community of interest and fragmentation of employees.

With that in mind the Board has previously set down certain indicia on which it will act in determining the appropriate bargaining unit; (see Usarco Case, 1967, (September) OLRB Mthly. Rep. 526).

I would find that there has been substantial fulfilment of the indicia set forth in that case, and based upon such principles, I would find that the appropriate bargaining unit in the present case is all employees of all of the operations of the respondent in Windsor.

6019-74-R: Health Sciences Association of the Regional Municipality of Ottawa-Carleton (Applicant) v. ST. VINCENT HOSPITAL (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members J.D. Bell and P.J. O'Keefe.

APPEARANCES AT THE HEARING: Michael Gordon and Miss Shirley Read for the applicant; Raymond Lapointe and Roger Vincent for the respondent.

DECISION OF THE BOARD: January 6, 1975.

1. As recorded in the decision of this Board dated August 15, 1974, the parties have agreed to the following bargaining unit:

"All physiotherapists, occupational therapists, remedial gymnasts, speech therapists, clinical psychologists or psychometrists, therapeutic and/or non-supervisory administrative dietitians in the employ of the respondent in the Regional Municipality of Ottawa-Carleton, save and except for department heads exercising managerial functions and persons above that rank."

2. As that decision indicates, the Board raised certain matters with respect to the proposed bargaining unit. The matter was set down for continuation of hearing and the Board heard the representations of the parties with respect to the matters raised in that decision. In the particular circumstances of this case, we are prepared to accept the agreement of the parties with respect to the appropriate bargaining unit.

3. In accepting the agreement of the parties with respect to the appropriate bargaining unit, we feel we must express our concern with such a bargaining unit and we must emphasize that this must in no way be accepted as a precedent for the appropriateness of such a bargaining unit. The whole matter of bargaining units in hospitals has caused much concern for this Board and the matter is currently under review. In particular, we are concerned with the fragmentation and proliferation of bargaining units in these institutions.



4. In the present case the applicant presented evidence and arguments concerning the community of interests between employees in certain occupational categories which it claims come under the term "Health Science Professionals". On the other hand these employees claim no community of interests with employees (although it appears in the present case the respondent has no employees in these categories) while this is one factor which the Board takes into consideration in determining bargaining units as our decision of August 15, 1974, points out. There are a number of other considerations with respect to the basic determination of 'appropriateness'.

5. In view of the agreement of the parties, the Board finds that all physiotherapists, occupational therapists, remedial gymnasts, speech therapists, clinical psychologists or psychometrists, therapeutic and/or non-supervisory administrative dietitians in the employ of the respondent in the Regional Municipality of Ottawa-Carleton, save and except for department heads exercising managerial functions and persons above that rank constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

7. A certificate will issue to the applicant.

6181-74-R: The Health Sciences Association of the Regional Municipality of Niagara Falls (Applicant) v. THE GREATER NIAGARA GENERAL HOSPITAL (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members E. Boyer and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Michael Gordon and Thomas Fleming for the applicant; E.L. Stringer and Helmut Weier for the respondent.

DECISION OF THE BOARD: January 7, 1975.

1. In a previous decision by this Board, the Board found that the applicant has the status as a trade union within the meaning of section 1(1)(n) of the Labour Relations Act. The matter was listed for continuation of hearing to deal with the appropriate bargaining unit which the Board must determine having regard to section 6 of the Labour Relations Act.

2. The position taken by the applicant is that the appropriate bargaining unit should be restricted to certain employees in certain occupational classifications. The respondent on the other hand takes the view that the bargaining unit should not be so restricted but

should include as well those employees who work in occupations related to or associated with those proposed by the applicant.

3. The respondent hospital is party to a number of collective agreements. In fact the respondent hospital runs the complete range of bargaining units which have been found to be appropriate in hospitals. Thus, there is a bargaining unit for stationary engineers, another bargaining unit for "service employees", a bargaining unit of nurses and a bargaining unit of technicians. This latter collective agreement was the result of two separate certificates by this Board.

4. One certificate covered laboratory technicians while the other certificate covered radiological and cardiological technologists. It is of interest to note that the parties have combined these two bargaining units into one collective agreement. During the course of the hearing, the Board was further informed that the respondent had granted voluntary recognition to a unit of office and clerical employees in the respondent's hospital. In such a context the respondent's position is that the appropriate bargaining unit is in the nature of a tag end unit, being a group of employees not covered by other collective agreements or certificates, and not included in the other remaining appropriate unit at the time this application was made, namely, the office and clerical unit. Indeed, this group is basically related to the group of occupations which the applicant claims is appropriate for certification.

5. In the circumstances of this case, we agree with the respondent that the appropriate unit would be the kind of tag end unit referred to in the previous paragraph. We can see no merit in the applicant's argument that the appropriate unit should be limited to a specific number of occupations within the remaining group of employees in the respondent hospital. To accept the position of the applicant would merely increase the number of bargaining units in what is clearly an overly fragmented situation at present.

6. We are therefore of the view that the appropriate bargaining unit in the present case as of the date of the making of this application, would include all those employees not covered by existing certifications or collective agreements or not included in the office unit normally granted to hospitals. In the present case that would involve some nineteen (19) or more employees. In view of the above finding, it is clear that the applicant has filed with the Board evidence of membership which totals less than 35% of the employees of the respondent in any bargaining unit which the Board might find to be appropriate in the present case.

7. Accordingly, this application is dismissed.

5499-74-R: Service Employees Union, Local 204, Affiliated with A.F. of L., C.I.O. C.L.C. (Applicant) v. COLLINGWOOD GENERAL MARINE HOSPITAL (Respondent) v. The Civil Service Association Ontario (Inc.) (Intervener).

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members O. Hodges and J. D. Bell.

DECISION OF THE BOARD: January 8, 1975.

1. By letter dated December 4, 1974, the applicant wrote to the Registrar concerning Lois Hough, classified as a food supervisor. The applicant's letter read:

While bargaining for a collective agreement for the above unit, I feel that the position of Lois Hough, Food Supervisor, should be part of the bargaining unit.

I would like to make application under Section 95, No. 1 and 2, that an examiner be appointed to assess this job.

2. By letter dated December 16, 1974, the Hospital Personnel Relations Bureau, on behalf of the respondent, replied to the applicant's request as follows:

I wish to acknowledge receipt of your letter dated December 9th last, and make the following comments.

The Union in its letter to you is requesting that an Examiner be appointed to investigate the position of Mrs. Lois Hough. The request is made under Sections 95, No. 1 and 2 of the Act. It should be pointed out that Section 3 of the original O.L.R.B. decision indicates that the parties had agreed that Mrs. Hough was excluded from the bargaining unit by virtue of Section 1(3)(b), and that the Board was not required to make an original decision on this matter. Therefore, there is no decision to reconsider.

I might further add that following the agreement of the parties that Mrs. Hough be excluded from the bargaining unit, her managerial responsibilities have been expanded further, and she has been



assigned to the permanent day shift to supervise when the majority of staff are on duty.

A collective agreement has been signed by the parties, and the composition of the bargaining unit has been defined. I feel that the problem raised by the Union should not be handled by the Ontario Labour Relations Board but should be a subject for negotiation between the parties at the next round of negotiations.

For your consideration.

3. The applicant was certified by the Board on May 21, 1974 for a bargaining unit of "all clerical employees of the respondent at Collingwood, Ontario, save and except the Secretary to the Administrator, the Secretary to the Director of Nursing Services, persons above the rank of Secretary to the Administrator and Secretary to the Director of Nursing Services, persons regularly employed for not more than 24 hours per week and persons covered by subsisting collective agreements". Paragraph 3 of the Board's decision certifying the applicant read as follows:

For the purposes of clarity the Board notes the agreement of the parties that Lois Hough is excluded from the bargaining unit by virtue of section 1(3)(b) of the Labour Relations Act.

4. In view of the agreement of the parties as to the exclusion of Lois Hough from the bargaining unit at the time of the application for certification, and in the absence of any allegation that her duties and responsibilities have changed since the issuance of the certificate, the applicant's request for a determination under section 95 is denied.

6958-74-R: Krystine Theresa Linttell (Applicant) v. The Toronto Newspaper Guild, Local 87 of The Newspaper Guild (Respondent) v. CCH CANADIAN LIMITED (Intervener).

BEFORE: George W. Adams, Vice-Chairman, and Board Members E. Boyer and F.W. Murray.

APPEARANCES AT THE HEARING: Krystine Theresa Linttell for the applicant; Paul Cavalluzzo and John Bryant for the respondent; Vas T. Heather for the intervener.

DECISION OF THE BOARD: January 8, 1975.

1. The name "The Toronto Newspaper Guild Local 87" appearing in the style of cause of this application as the name of the respondent is amended to read: "Toronto Newspaper Guild, Local 87 of The Newspaper Guild".

2. This is an application for a declaration terminating the bargaining rights of the intervener. The Board, by letter dated November 28, 1974, wrote to the applicant and advised her in the following manner:

I would draw your attention to section 48 of the Board's Rules of Procedure as set out in Form 2 enclosed herewith. Evidence of signification by employees that they no longer wish to be represented by a trade union must be in the form provided for in section 48 of the Board's Rules, and must be filed with the Board not later than December 6, 1974 the terminal date set for this application.

The applicant will be required to attend the hearing in order to present its case to the Board and to speak to such issues as may arise in connection with this application. Failure of the applicant to appear at the hearing of this case, either in person or through an authorized representative, will result in the rejection by the Board of the application.

It should be noted that any employee or representative who appears at the hearing will be required to testify, or produce a witness or witnesses who will be able to testify from his or their personal knowledge and observation, as to (a) the circumstances concerning the origination of the material filed, and (b) the manner in which each of the signatures was obtained.

Paragraph 2 of Form 2 of the Board's forms reads:

2. Your attention is directed to subsections 1 and 2 of section 48 of the Board's Rules, which read as follows:

- (1) Evidence of membership in a trade union or of objection by employees to certification of a trade union or of signification by employees that they no longer wish to be represented by a trade union shall not be accepted by the Board on an application for certification or for a declaration terminating bargaining rights unless the evidence is in writing, signed by the employee or each member of a group of employees, as the case may be, and,
  - (a) is accompanied by,
    - (i) the return mailing address of the person who files the evidence, objection or signification, and
    - (ii) the name of the employer; and
  - (b) is filed not later than the terminal date for the application.
- (2) No oral evidence of membership in a trade union or of objection by employees to certification of a trade union or of signification by employees that they no longer wish to be represented by a trade union shall be accepted by the Board except to identify and substantiate the written evidence referred to in subsection 1.

3. Thus the applicant was advised before both the terminal date and the hearing date that she would be required to testify or produce a witness or witnesses who would be able to testify from her or their personal knowledge and observation, as to the circumstances concerning the origination of the material filed and the manner in which each of the signatures was obtained.

4. The bargaining unit affected by this application embraces all employees of CCH Canadian Limited in its editorial department at Metropolitan Toronto, save and except the managing editor, persons above the



rank of managing editor, secretary to the managing editor and students employed during the summer. At the date of application it was comprised of 22 employees.

5. Krystine Linttell, the applicant, is one of the editors in the bargaining unit. It was her evidence that, with no encouragement or assistance of management, she typed a declaration supporting an application for certification; had a number of copies xeroxed; and mailed a copy of the declaration enclosed with a letter of explanation to a selected number of the employees in the unit. The declaration read:

I, the undersigned, an employee of CCH Canadian Limited, give my consent and approval to the application being submitted to obtain decertification of Unit 87 of the Toronto Newspaper Guild as the bargaining unit for the editorial employees of CCH Canadian Limited. The application is being submitted on my behalf and represents my wishes.

The explanatory letter read:

56A Lawrence Avenue E.,  
Toronto, Ontario,  
M4N 1S3

October 30, 1974.

Dear

An application to obtain decertification of Unit 87 of the Toronto Newspaper Guild as bargaining agent for the editorial employees of CCH Canadian Limited will be submitted in the near future. The application must represent the wishes of the majority of employees covered by the bargaining unit and must be accompanied by the signatures of those desiring decertification. The law does not make allowances for employees who prefer to abstain since the number making up the required majority is calculated on the basis of the total number employed. If you would like to support the application please sign the enclosed document and return it to me.

Yours truly,

Krystine Linttell

6. Mrs. Lintteli prepared these documents at her home and her husband had copies made at his office. She obtained the addresses of the employees from the telephone book and from an address book kept at the office but accessible to all employees.

7. The documents were therefore sent out by mail and accompanied by a request that they be signed and returned to the applicant. Fourteen of these documents found their way back to her, signed by individual employees, and she then filed them with the Board on or about November 28, 1974. All of the individual documents filed with the Board were dated by hand between November 6, 1974 and November 20, 1974 except for one document which had the date typed in as November 7, 1974.

8. It was the applicant's evidence that three documents were returned to her by mail; eight documents were brought to her by another employee on two separate occasions; two documents were dropped on her desk by the persons whose signatures appeared on them; and one document was signed in her presence at her desk. Therefore the applicant personally witnessed only one signature and could give evidence of direct contact in collecting the documents for only two other employees. Accordingly while she was able to give testimony from her personal knowledge and observation concerning the origination of all the statements of desire, she could not provide such direct evidence in regard to the manner in which each of the signatures on the statements of desire was obtained. Thus her testimony does not fulfil the requirements outlined by Rule 48 of the Board's Rules of Procedure - a rule that, as noted above, was specifically drawn to the applicant's attention before both the terminal date and the hearing date.

9. The rule has been applied to both petition evidence arising in the course of an application for certification and to applications for termination. But so the Board's requirements do not appear unduly technical it is worth examining the purpose of these requirements.

10. In certification cases the Board is called upon from time to time to consider documents filed by employees in opposition to the application. Very often these documents follow closely on the heels of evidence in support of the trade union executed by the very same people causing the Board to question the voluntary nature of the subsequent expression in light of the natural inclination of an employee to identify himself with the interest and wishes of his employer. This concern was capsulized in Welders, Public Garage Employees, Local 8417 and Pigott Motors (1961) Ltd., (1962), 63 CLLC 16,264 where the Board observed:

There are certain facts of labour-management relations which this Board has, as a result of its experience in

such matters, been compelled to take cognizance. One of these facts is that there are still some employers who, through ignorance or design, so conduct themselves as to deny, abridge or interfere in the rights of their employees to join trade unions of their own choice and to bargain collectively with their employer. In view of the responsive nature of his relationship with his employer, and of his natural desire to want to appear to identify himself with the interests and wishes of his employer, an employee is obviously peculiarly vulnerable to influences, obvious or devious, which may operate to impair or destroy the free exercise of his rights under the Act. It is precisely for this reason, and because the Board has discovered in a not inconsiderable number of cases, that management has improperly inhibited or interfered with the free exercise by employees of their rights under the Act, that the Board has required evidence in a form and of a nature which will provide some reasonable assurance that a document, such as a petition, signed by employees purporting to express opposition to the certification of a trade union truly and accurately reflects the voluntary wishes of the signatories. (See for instances, the Sinnott News Case, CCH Canadian Labour Law Reporter, 1955-59, Transfer Binder ¶16,114 at p. 12,209, and the Fleck Manufacturing Ltd. Case, CCH Canadian Labour Law Reporter, vol. 1, ¶16,236, at p. 13,201).

Therefore because employees are peculiarly susceptible to influence by an employer the Board requires the first hand evidence of both the origination and circulation of the petition as outlined in Rule 48. Only when this evidence is forthcoming is the Board in a position to determine that the statements of desire are an accurate reflection of the wishes of the employees who have signed them. In fact, the Board has been so conscious of the considerations outlined in Pigott Motors (1961) Ltd., *supra*, that it has placed great significance upon the custody of the petition throughout the period when it is being



signed. If the custody cannot be substantially documented by direct evidence through this period the Board will not attach any weight to the document; (see Vered and Harvey Company Limited [1971] OLRB Nov. 736 and Formosa Spring Brewery [1974] OLRB Sept. 604).

11. These requirements are often contrasted with those imposed upon trade unions in the certification process as did Mr. Irwin in his dissent in Remington Rand Limited 63 CLLC ¶16,288 where he noted that the same kind of evidence is not required. And Mr. Heather representing the employer in this case took essentially the same position. But this perspective, as noted in the chairman's addendum in Remington Rand Limited, *supra*, ignores the experience and concern of the Board - an experience and concern reflected in the excerpt from the Pigott Motors (1961) Ltd. case. Furthermore, in an application for certification the Board requires a trade union to establish its status; to submit membership evidence in a prescribed form and accompanied by the payment of \$1.00; and to file a declaration concerning membership documents attesting to the accuracy of such documents (Form 7). The consequences of defective membership evidence or non-disclosure can be very severe; (see National Steel Can Corp. Ltd. [1966] OLRB Jan. 738 and Stanley Steel Company Limited [1972] OLRB Feb. 181, in this regard).

12. As one deduces from reading the Remington Rand Limited case the Board applies the same standards to the evidence supporting an application for termination as it applies to petitions in opposition to a trade union that arise during the certification procedures. This position is outlined in Riel and Int. Bro. of Teamsters Local 230 (known as the Harry Haley & Sons case) 58 CLLC ¶18,106 where the Board described its approach in the following way:

The Board has consistently held that like principles should be applied to the documents filed in support of applications by employees for termination of bargaining rights. In other words the Board has taken the position that even though a majority of the employees in the bargaining unit have signed a document purporting to be an expression of their wishes that they no longer wish to be represented by a trade union, there may be circumstances surrounding the origination or circulation of the document or documents in question which do not make it incumbent on the Board to direct a representation vote.

In fact the use of the word "voluntary" in section 49(3) seems to be a specific legislative direction to the Board to inquire into the history of ostensible wishes of those employees subscribing to an application for termination; (see P. Chapman Cartage Ltd. [1972] OLRB Jan. 356).

13. Therefore, while it is not necessary that there be eyewitness testimony as to the actual inscribing of each signature; (see U.A.W. and Matczynski [1967] OLRB Mar. 976 and Pyrotenox of Canada Ltd. 60 CLLC 65) there must be sufficient direct evidence of both the manner of obtaining signatures and the origination of the statements of desire. Thus it has been said that "omissions in the evidence must inevitably raise questions which detract from the weight to be given to the petitions as being originated by the employees and expressing the voluntary wishes of the signatories"; (see UAW and Watt [1965] OLRB Oct. 472).

14. The evidence before the Board in this case is subject to a number of serious omissions. Of the fourteen documents filed with the Board, the applicant could tell the Board only about the circumstances under which one of the documents was signed. Furthermore, even if we were to accept the mailing of such documents as a valid method of circulation, the documents mailed by the applicant to the employees were not mailed back directly to her. Rather eight documents found their way to another employee who relayed them to the applicant. This other employee was not in attendance at the hearing and therefore could neither give evidence as to his or her role in the signing of the documents nor supplement the evidence pertaining to the circumstances under which the signatures were obtained.

15. Therefore, even if as a general matter the Board should apply less stringent standards to applications for termination than it does to other petitions because the trade union is usually part of the work place by this time, this is not the case to consider such changes. There are large and important gaps in the custody of statements of desire and the applicant provided the Board with no compelling evidence establishing why mail was the only effective way in which the employees could be reached in any event. In fact, the bargaining unit consists of a very small number of employees. Moreover, the mail was not the exclusive mode of circulation used in that another employee played a substantial role in collecting the declarations despite the directive in the letter addressed to each employee by the applicant. This employee was not called as a witness and therefore the Board has no idea of what this employee said to the other employees and has no idea who this employee was.

16. Accordingly, having regard to these substantial omissions and in the light of the purpose underlying the Board's approach in this area we cannot give any weight to at least eight of the documents filed with the Board, and therefore we must find that less than fifty per cent of the employees in the bargaining unit had voluntarily signified in writing on

or before December 6, 1974, the terminal date fixed for this application, that they no longer wished to be represented by the trade union.

17. The application is dismissed.

7057-74-R: Carpenters District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233 (Applicant) v. TRANSWAY STEEL BUILDINGS LTD. (Respondent).

BEFORE: R.A. Furness, Vice-Chairman, and Board Members J.D. Bell and E. Boyer.

DECISION OF THE BOARD: January 10, 1975.

. . .

7. The applicant is seeking certification on behalf of a craft bargaining unit of carpenters and carpenters' apprentices in the Board's geographic area #8. The General Contractors' Section of the Toronto Construction Association has written a letter to the Board dated January 7, 1975, in which it states that it desires to make representations before the Board at an anticipated hearing of this application. These representations are stated to be:

- (a) The bargaining unit should be so described so as to conform to the appropriate unit of employers described in the Accreditation Order issued on April 18, 1973, and referred to in your notice.
- (b) Such other representations as may appear relevant arising out of matters before the Board at the hearing fixed.

8. The appropriate unit of employers defined in the accreditation application (see Board File #1322-71-R) is:

All employees of carpenters and carpenters' apprentices for whom the respondent has bargaining rights in Metropolitan Toronto, the Regional Municipality of York, the County of Peel, the Township of Esquesing, the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, in the industrial, commercial and institutional sector of the construction industry.



9. The descriptions of the proposed bargaining unit and the unit of employers differ only with respect to the limitation of "in the industrial, commercial and institutional sector" in the unit of employers.

10. In the Eilpro Holdings Inc. case, Board File #3413-72-R, the Board held that it would be premature at that time to determine bargaining units with reference to a sector as requested by the respondent in that case. In the Vroom Construction Ltd. case, Board #5934-74-R, the Board encountered a similar point involving the same accreditation order in Board File #1322-71-R. The Board is of the view that it ought not to restrict bargaining units which are determined in certification applications to sectors. However, the first point raised by the General Contractors Section of the Toronto Construction Association is taken into account where the Board, in a clarity note, makes it clear that the certificate to be issued in the instant application covers carpenters in the industrial commercial and institutional sector of the construction industry.

. . .

15. A certificate will issue to the applicant.

6985-74-R: Local Branch of Federation of Children's Aid Staffs of Children's Aid Society of Sault Ste. Marie and District of Algoma (Applicant) v. FEDERATION OF CHILDREN'S AID STAFFS (Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members J.D. Bell and H. Simon.

APPEARANCES AT THE HEARING: James Arcangeletti for the applicant; Patricia Neira for the respondent; A.P. Tarasuk and Ian Sutherland for Children's Aid Society of Sault Ste. Marie and District of Algoma.

DECISION OF THE BOARD: January 15, 1975.

1. This is an application for a declaration terminating the bargaining rights of the respondent.

2. Prior to both the terminal date and the date of hearing the applicant was apprised of the fact that in accord with Rule 48(5) the Board would require testimony in the form of personal knowledge and observation of the circumstances concerning the origination of the statements of desire filed with the Board and the manner in which each signature on the statements of desire was obtained.

3. The bargaining units subject to this application are three in number. The first unit consists of all social workers, social work assistants and case-aides employed by the Society at its offices at

Sault Ste. Marie and in the District of Algoma, save and except supervisors, persons above the rank of supervisor, persons employed for not more than 24 hours per week and students employed during the school vacation period. The second unit (the clerical group) consists of all employees of the Society at its offices at Sault Ste. Marie and in the District of Algoma, save and except office supervisors, persons above the rank of office supervisor, social workers, social work assistants, case-aides, social work supervisors, secretary to the Director, persons employed for not more than 24 hours per week and students employed during the school vacation period. And finally, the third unit (the part-time group) consists of all social workers, social work assistants, and case-aides regularly employed for not more than 24 hours per week at its offices in Sault Ste. Marie and the District of Algoma.

4. At the time this application was made these three bargaining units consisted of a total of twenty-two employees. The applicant filed three typewritten documents bearing a total of twenty-one signatures, twenty of which coincided with the names of persons in the respective bargaining units. The Board therefore, in accord with its practice in such matters, inquired into the origination and circulation of the statements of desire.

5. Each statement of desire was commonly worded although one document bearing seventeen signatures was dated November 22, 1974; another bearing three signatures was dated November 18, 1974; and the final document bearing one signatures was dated November 19, 1974.

6. In applications of this kind the Board has required actual compliance with Rule 45(5) in order to assure itself that not less than fifty per cent of the employees in the bargaining unit have voluntarily signified in writing that they no longer wish to be represented by the trade union. The purpose of requiring direct evidence of the origination and circulation of a statement of desire is fully detailed in the Remington Rand Limited case 63 CLLC 16,288 and the Harry Hayley & Sons case 58 CLLC 18,106. But, put simply and concisely, without such direct evidence, the Board will not ordinarily assume that the signatures constitute a voluntary expression of the employee's true wishes in that its experience over the years has established that employees, individually and a group, are peculiarly vulnerable to employer influences that impair or destroy the free exercise of rights under the Act; (See Pigott Motors (1961) Limited 63 CLLC 16,264).

7. The evidence of Mr. Arcangeletti does not document the circulation of the November 22, 1974 document because another employee circulated the document, and thus his evidence would normally be insufficient to support an application such as this. However, the respondent did not object to the insufficiency of the evidence and joined in the applicant's request for a representation vote. Presumably the respondent - the party

with the opposing interest in these proceedings - is very familiar with the chain of events surrounding the application and from this familiarity is itself assured that management has played no role in the circulation and origination of the three documents. Therefore, on this basis and this basis alone, we are prepared to find that not less than fifty per cent of the employees of the Society in the three bargaining units described in paragraph 3, at the time the application was made, had voluntarily signified in writing that they no longer wish to be represented by the respondent union on December 16, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining the number of persons who have voluntarily signified in writing that they no longer wish to be represented by the respondent union under section 49(3) of the said Act.

8. Accordingly we direct a representation vote be taken of the employees of the Children's Aid Society of Sault Ste. Marie and District of Algoma in the three bargaining units described in paragraph 3 on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken.

9. Because there has been no collective agreement integrating the three bargaining units since the certificates were issued there will be one representation vote but the ballots of the employees in the respective bargaining units will be isolated with regard to the three bargaining units and tabulated in that fashion.

10. The matter is referred to the Registrar.

6551-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. BACM, B-A CONSTRUCTION LTD., BACM INDUSTRIES LIMITED, B.A.C.M. LIMITED (Respondents).

BEFORE: R.A. Furness, Vice-Chairman, and Board Members J.E.C. Robinson, Q.C., and H. Simon.

APPEARANCES AT THE HEARING: L.A. MacLean and W. Sherman for the applicant; Lyle M. Smordin for all respondents.

DECISION OF THE BOARD: January 16, 1975.

. . .

3. The applicant is seeking certification on behalf of a bargaining unit of carpenters and carpenters' apprentices in the employ of the respondents in the District of Kenora (Patricia Portion included). The job site affected by this application is in the District of Kenora.



4. The applicant has bargaining rights for carpenters and carpenters' apprentices employed by B-A Construction Ltd. in the District of Kenora (including the Patricia Portion) by virtue of a collective agreement which was entered into on December 18, 1972. Prior to this collective agreement the Board on February 25, 1971, had certified the United Brotherhood of Carpenters and Joiners of America for a bargaining unit of all carpenters and carpenters' apprentices and all construction labourers in the employ of B-A Construction Ltd. in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman.

5. The applicant argued that B.A.C.M. Limited, BACM Industries Limited and B-A Construction Ltd. are corporate components of the same enterprise. The applicant alleges that these companies are under common control or direction and that they carry on associated or related activities or businesses. The applicant maintains that notwithstanding the collective agreement, section 1(4) of The Labour Relations Act is wide enough to permit the Board to declare that these three companies are bound by the collective agreement or that B.A.C.M. Limited and BACM Industries Limited are a single employer and to certify the applicant accordingly. The applicant also argued that BACM should be included as an employer although the applicant stated that it was not pressing its argument with reference to BACM.

6. The respondents argued that BACM Industries Limited had no employees and was merely a holding company and that B-A Construction Ltd. is one arm of B.A.C.M. Limited. The respondent maintained that while B.A.C.M. Limited engaged in construction work in Ontario, it did not have any employees in Ontario who are employees under The Labour Relations Act. The respondent reasoned that because the carpenters who are affected by this application are employees of B-A Construction Ltd. and are covered by the collective agreement with the applicant the provisions of section 5 of The Labour Relations Act preclude the Board from issuing a certificate. In addition the respondent alleged that BACM was merely representation which had been set forth as a logo and was not a legal entity.

7. David Penner, an employee of BACM Industries Limited, the manager of administration of B.A.C.M. Limited and a director of B-A Construction Ltd. was called as a witness by the respondents. William Sherman and Michael Noga who are representatives of the applicant and Lucien Durand, a carpenter employed at the job-site affected by this application at the relevant time, were called as witnesses by the applicant.

8. Mr. Sherman gave evidence that he visited the job-site in June of 1974 and observed carpenters at work. At that time he spoke to Bert Dirkson who was the project manager for the respondent and explained the

reason for his presence. Upon informing Mr. Dirkson of the existence of a collective agreement between B-A Construction Ltd. and the applicant, the witness was allowed to check the carpenters on the site for union membership. Mr. Sherman discovered non-union carpenters on the site and he advised them that they had an obligation to either join the union or leave the project. One carpenter showed reluctance to become a union member and packed up his tools and left. This incident angered Mr. Dirkson who stated that he was going to check with Winnipeg regarding the existing collective agreement.

9. The witness testified that after Mr. Dirkson had telephoned Winnipeg, the latter announced that B.A.C.M. Limited was the employer and not B-A Construction Ltd. and informed Mr. Sherman that if he wanted to get on the site again he should do it through him or the consulting engineers. Mr. Sherman informed the Board that he visited the site again on October 1, 1974, and upon meeting Mr. Dirkson was asked what he was doing at the site. The witness was asked to leave the site and was told that if he wanted to visit the site he was to do it through the chief engineer. He was also instructed not to do any organizing on the site. Mr. Sherman observed carpenters working on the site and noted the sign "BACM" on the office and the equipment. On an earlier occasion in Winnipeg he had observed the names of the respondents on the window or door of their offices and "BACM" on equipment in an adjacent yard.

10. Mr. Noga gave evidence that he was present at the site with Mr. Sherman on October 1, 1974, and observed men who were wearing white hats which displayed the sign "BACM". Mr. Durand testified that he was hired in Winnipeg for work at the site and that he worked at the site for 45 days doing carpentry work. He believed he was working for BACM. The other carpenters at the site believed they were working for BACM or B.A.C.M. Construction. The equipment at the site bore the sign "BACM" and the foreman's white hat bore the same sign. Mr. Durand could not remember the name of the payer on the cheques which he received for the work he performed at the site. He stated that he had heard of B-A Construction Ltd. and had not been aware that it was associated with BACM. Mr. Durand produced in evidence a cheque dated November 21, 1974, which was made payable to him with respect to vacation pay. This cheque bears the logo BACM together with the names of three companies, namely, B.A.C.M. Limited, B.A.C.M. Construction Company and B.A. Construction Ltd. In cross-examination the witness agreed that the cheques which represented payment for work at the site could have had written thereon the name of B-A Construction Ltd.

11. Mr. Penner testified that he concentrates on the respondents' personnel department for construction jobs. He gave evidence that there was a contract between the owner and B.A.C.M. Limited and a service contract between B.A.C.M. Limited and B-A Construction Ltd. The respondents did not produce these alleged contracts before the Board and offered no explanation for their absence. The applicant objected to the evidence

which was proffered by the witness regarding the terms of these alleged contracts and invoked the exclusionary aspect of the best evidence rule. The Board has considered the authorities on the best evidence rule and declares that the respondents in all the circumstances ought to have produced the originals of these private documents. Accordingly, the Board is not prepared to receive the testimony of Mr. Penner regarding the alleged contents of these two private documents.

12. The witness gave evidence that the name on the cheques given to the men who worked on the site was B-A Construction Ltd. and that the equipment used on the site is owned by B.A.C.M. Limited. He informed the Board that BACM Industries Limited is a management and holding company and that B.A.C.M. Limited is a wholly-owned subsidiary of BACM Industries Limited. B-A Construction Ltd. is a wholly-owned subsidiary of B.A.C.M. Limited. He testified that the names of the various companies in the group appear on the door of the head offices in Winnipeg and that all hourly-rated employees at the site are paid by B-A Construction Ltd. He informed the Board that BACM Industries Limited does not have any personnel in Ontario and that there is no such corporate entity as BACM. Mr. Penner explained that B.A.C.M. Limited has two divisions - a land division and a construction division and that the land division does not have any employees in Ontario.

13. Under cross-examination, Mr. Penner agreed that B-A Construction Ltd. is under the control and direction of B.A.C.M. Limited for all purposes including labour relations. The witness repeated that B.A.C.M. Limited employs all of the foremen at the site. Mr. Penner was cross-examined about the directors of the various respondents. He stated that he did not know the answers to these questions. However, the answers to these questions were supplied by counsel for the respondents and were received in evidence on the agreement of the parties. The president of B-A Construction Ltd. is a Dick Mulder who is not associated in any capacity with either B.A.C.M. Limited or B.A.C.M. Industries Limited. The chairman of the board of B-A Construction Ltd. is I. Simkin who is a director of the other companies. The directors of B-A Construction Ltd. (of whom the witness is one) are not directors of either B.A.C.M. Limited or BACM Industries Limited.

14. During the cross-examination of Mr. Penner the most recent annual information returns under The Corporations Information Act, 1971, with respect to BACM Industries Limited and B.A.C.M. Limited were produced in evidence before the Board. The returns indicate that S. Simkin, A.L. Simkin, I. Simkin and J.L. Bodie are directors of these two corporations and that A.L. Simkin is president of these two corporations. In addition, T.R. Denton, who is a director of B.A.C.M. Limited, is the secretary of BACM Industries Limited. Kenneth C. Kingsley who is a director of B.A.C.M. Limited, is the Treasurer of BACM Industries Limited. J.J. Denholm is both a director and the treasurer of B.A.C.M. Limited.



15. As the Board stated in the Walters Lithographing Company Limited case, [1971] OLRB Rep. 406,412:

"The indicia or criteria which the Board considers relevant in making a determination as to whether the activities or businesses of one or more corporations, individuals, firms, syndicated or associations, or any combination thereof are carried on under common direction and control and therefore may be treated as one employer are -- (1) common ownership or financial control, (2) common management, (3) interrelationship of operations, (4) representation to the public as a single integrated enterprise, and (5) centralized control of labour relations. No single criterion is likely to decide the issue. Rather, as has been stated, the Board's determination undoubtedly will be based on an appraisal of all of them in the light of the particular facts before it. It hardly need be said that in applying the above criteria, the greater the degree of functional coherence and interdependence which the Board finds among the associated or related activities and businesses the more probable it is that the Board will conclude that the entities carrying on these activities should be treated as one employer. We would mention here also that the indicia or criteria themselves obviously overlap."

16. In the instant case, B-A Construction Ltd. is a wholly-owned subsidiary of B.A.C.M. Limited which is in turn a wholly-owned subsidiary of BACM Industries Limited. There is a thread of common directors and officers with respect to these three companies. Mr. Penner, who is a director of B-A Construction Ltd. and who has signed a collective agreement with the applicant on behalf of B-A Construction Ltd. is an employee of BACM Industries Limited and the manager of administration of B.A.C.M. Limited. B-A Construction Ltd. is under the direction and control of B.A.C.M. Limited for all purposes including labour relations. B-A Construction Ltd. and B.A.C.M. Limited were both actively involved at the site in question and B.A.C.M. Limited supplied the equipment. The logo BACM is extensively used on the respondents' equipment, stationery and cheques. The respondents have the same head office in Winnipeg and there appears to be a common banking account as witnessed by the cheque referred to in paragraph ten herein.

17. The Board finds that B-A Construction Ltd. and B.A.C.M. Limited satisfy the second, third, fourth, and fifth criteria referred to in paragraph fifteen herein. In these circumstances, the Board finds that

these two respondents are under common control or direction and carry on associated or related activities or businesses within the meaning of section 1(4) of The Labour Relations Act. Both of these respondents are clearly engaged in the construction business and the Board finds that they are employers within the meaning of section 106(c) of The Labour Relations Act. Having regard to the general nature of the respondents' operations, the Board sees no need to consider B.A.C.M. Limited as either two separate divisions or as two separate respondents.

18. There remains for consideration the two respondents BACM and BACM Industries Limited. On the basis of the evidence before it, the Board has no hesitation in finding that BACM is not a legal entity and accordingly the application in so far as it relates to BACM is dismissed. BACM Industries Limited is to some degree under the same common control or direction as B-A Construction Ltd. and B.A.C.M. Limited. However, on the basis of the evidence before it, the Board is not prepared to find that BACM Industries Limited carries on an associated or related activity, or business with the latter two respondents. Certainly there was no evidence before the Board to even suggest that BACM Industries Limited is engaged in the construction industry.

19. This application for certification was filed under the construction industry provisions of the Labour Relations Act. Even if the Board were prepared to find that BACM Industries Limited fulfilled the requirements of section 1(4) of The Labour Relations Act, the Board would not be prepared to treat this application as an application within the meaning of section 108 of The Labour Relations Act because on the evidence BACM Industries Limited is not an employer within the meaning of section 106(c). Where applications are filed pursuant to the construction industry provisions of The Labour Relations Act, the Board has been most careful not to confer the special advantages enjoyed by such applications where the construction industry is not exclusively involved. Reference is made, by analogy, to the Canadian Pittsburgh Industries Limited et al case, OLRB M.R. April 1969, p. 135. In the result this application is dismissed in so far as it relates to BACM Industries Limited.

20. Having regard to the foregoing, the Board finds that this is an application for certification within the meaning of section 108 of The Labour Relations Act in so far as it relates to B-A Construction Ltd. and B.A.C.M. Limited.

21. The respondents argue that section 5(1) is a bar to this application because of the subsisting collective agreement between the applicant and B-A Construction Ltd. Section 5(1) of The Labour Relations Act states the circumstances under which a trade union may apply for certification and states:

"Where no trade union has been certified as bargaining agent of the employees of an employer in a unit that a trade union claims to be appropriate for collective bargaining and the employees in the unit are not bound by a collective agreement, a trade union may, subject to section 53, apply at any time to the Board for certification as bargaining agent of the employees in the unit."

22. Section 1(4) of The Labour Relations Act states:

"Where, in the opinion of the Board, associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, under common control or direction, the Board may treat corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act. R.S.O., 1970, c. 232.s.1."

23. Section 5(1) contemplates that an application for certification may be made "where no trade union has been certified as bargaining agent of the employees of an employer in a unit that a trade union claims to be appropriate for collective bargaining and the employees in the unit are not bound by a collective agreement, .....". On the basis of the evidence before the Board there is a dispute over whether the carpenters at the site were employees of B-A Construction Ltd. or B.A.C.M. Limited. There is conflicting evidence on this point. The carpenters believed they were working for BACM. Mr. Durand received his vacation pay by means of a cheque which bears the names of B.A.C.M. Limited, B.A.C.M. Construction Company and B.A. Construction Ltd. In addition there is the assertion and conduct of Mr. Dirkson prior to the filing of this application that B.A.C.M. Limited was the employer of the carpenters. Mr. Penner testified that B-A Construction Ltd. paid all of the hourly rated employees at the site. However, the admissible evidence of Mr. Penner did not establish that the carpenters at the site were employees of B-A Construction Ltd. and not of B.A.C.M. Limited. The Board is satisfied on the basis of the evidence that the carpenters who are affected by this application were employees of B.A.C.M. Limited. Therefore, the conditions set forth in section 5(1) have been satisfied. Moreover, in our view there is nothing in the provisions of section 1(4) which precludes a certificate issuing with respect to one respondent where an applicant already has bargaining rights for another respondent where the respondents satisfy the provisions of section 1(4) of The Labour Relations Act.



24. The applicant is seeking alternative relief in this application and requests either a declaration that the respondents are bound by the collective agreement on a finding that they are a single employer with an appropriate certificate issuing to the applicant. The ramifications of such a declaration were not argued before the Board and the Board is not prepared to deal with this first point in the absence of full argument. However, the applicant is entitled to a certificate.

25. The Board further finds that all carpenters and carpenters' apprentices in the District of Kenora including the Patricia Portion in the employ of the respondents, B-A Construction Ltd. and B.A.C.M. Limited, save and except non-working foremen, persons above the rank of non-working foreman, and persons covered by the collective agreement between the applicant and B-A Construction Ltd. dated December 18, 1972, constitute a unit of employees of the respondents appropriate for collective bargaining.

. . .

27. A certificate will issue to the applicant.

7019-74-R: Retail Clerks Union, Local 486 (Applicant) v. OTTAWA BEEF COMPANY LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: I. Scott and B. H. Baily for the applicant, J. W. Touchey and P. Weinstein for the respondent.

DECISION OF THE BOARD: January 17, 1975.

. . .

2. During the course of these proceedings conducted before the Board January 14, 1975, the uncontradicted testimony of Jean Paul Paquette, a "Scaleman" in the employ of the respondent, is to the effect that at the time of his signing a membership card and paying a dollar towards membership in the applicant, he was advised by one Guy Gauthier that if the union was unsuccessful in its application for certification, then the dollar would be returned to him. The evidence further discloses that the said Guy Gauthier is a full time paid International Representative of the union and that he reports directly to Barry Baily, the President of the applicant. The filings with the Board reveal that of the twenty-two relevant membership cards submitted in support of this application, Gauthier is shown as collector on fourteen of such cards.

3. Having carefully reviewed the totality of the evidence as adduced, the Board in these circumstances, is not prepared to accept as valid evidence of membership, those membership cards upon which Gauthier is shown as collector.

4. In the light of this finding, it will not be necessary for the Board to deal further with any other outstanding issues raised during the course of these proceedings.

. . .

6. This application is accordingly dismissed.

6642-74-R: Dorothy Hall (Applicant) v. Local 280 of the International Beverage Dispensers' & Bartenders' Union of the Hotel and Restaurant Employees' and Bartenders International Union, A.F. of L., C.I.O., C.L.C. (Respondent) v. KILGORAN HOTELS LIMITED CARRYING ON BUSINESS AS YE OLDE BRUNSWICK TAVERN (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members F. W. Murray and H. Simon.

DECISION OF THE BOARD: January 3, 1975.

1. This is an application dated December 3, 1974 for reconsideration of a Board decision denying the admissibility of certain evidence pertaining to alleged violations of various provisions of a collective agreement between the respondent and intervener. Although notice of said application was forwarded to the other parties to these proceedings, no representations were received by them with respect to the merits of the respondent union's position.

2. The Board does not propose to deal in any detail with the respondent's written submissions in that no argument was made that was not otherwise available to counsel at the initial hearing of this matter. Nothing in counsel's representations however, persuades us to depart from the Board's longstanding policy of declining to review the activities of parties to a collective agreement with a view to determining whether a violation of the terms thereof has been committed. We repeat that under the scheme of The Labour Relations Act this is a matter reserved exclusively to the jurisdiction of a Board of Arbitration and the antecedent procedures thereto negotiated under the terms of the agreement.

3. Nevertheless counsel for the respondent has indicated that there may very well be other avenues available for establishing violations by the intervener of the collective agreement such as recorded arbitration settlements. In this regard the Board, although disagreeing

with counsel's submission that our ruling may deter future settlements of grievance disputes, is prepared to permit evidence to be tendered with respect to the record of any grievance and arbitration proceeding relevant to the issue of the voluntariness of the statement of desire filed in support of the application. The Board wishes to stress however that such information will be subject to any privilege that may be attendant upon the admissibility of "without prejudice" settlements of disputes. [See The Statutory Powers Procedure Act R.S.O. 1970 C47 S15(2)].

4. In all other respects the Board's decision remains unaltered. A party to proceedings before the Board must accept a case as it finds it. The Board cannot permit its processes to be used as a substitute for arbitration by a party to a collective agreement merely because fortuitously in a proceeding under The Labour Relations Act it may have become aware of a possible infraction of that agreement. It is the duty of parties to a collective agreement to safeguard their rights by remaining vigilant of the administration and application of the terms thereof during its term of operation. The Board is not a court of last resort for a party that fails to take appropriate measures to protect those rights at the time an alleged violation may have occurred. In other words we refuse to vary our original position of refusing to undermine negotiated remedies provided for under the terms of a collective agreement by assuming jurisdiction over matters that are not properly the Board's concern. Therefore our ruling with respect to questions put by counsel in cross-examination of the witness, Ms. Hall, is sustained.

5. The Board's decision of November 20, 1974 is therefore varied to the extent permitted in paragraph 3 herein. In all other aspects, the respondent's application for reconsideration is denied.

6325-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. GENERAL CRANE INDUSTRIES LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H.J.F. Ade and P. J. O'Keefe.

APPEARANCES AT THE HEARING: H. F. Caley and H. C. Anderson for the applicant; W. Winkler for the respondent; S. Lerner, Q.C., J. Jeffrey, P. McFarland and J. Carter for the objectors.

DECISION OF THE BOARD: January 24, 1975.

1. This is an application dated September 30, 1974, filed by the respondent requesting reconsideration by the Board of its decision dated September 17, 1974, certifying the applicant trade union for a group of the respondent's employees. In support of its application



the respondent alleges various acts of impropriety committed by "certain persons acting as representatives or supporters of the applicant" during the course of the applicant's organizational campaign. Counsel on behalf of the group of objectors joins the respondent in his letter dated October 3, 1974 in requesting reconsideration on the same grounds.

2. The allegations filed by the respondent read as follows:

- (a) During the latter part of August 1974, during the applicant's organizational campaign, an employee of the respondent named Kenneth Dans, who is a deaf mute, found a note with a large question mark placed in his work glove. A few days later, on or about August 38, 1974, the said Kenneth Dans found another note on his work bench, which note contained a question mark with the words "I will killer you" inscribed on it. During this period further notes were directed to the said Kenneth Dans stating among other things, that "you will be sorry" for not joining the U.A.W.
- (b) On or about August 26, 1974, certain wires were ripped off from a motor vehicle belonging to the said Kenneth Dans as it was parked in the respondent's parking lot during working hours.
- (c) On or about September 5, 1974 Mrs. D. Jessom, an employee of the respondent who was a member of a group of employees who objected to the Application for Certification, received a phone call at her home. The caller stated words to the effect that "you've got a sore neck now, how would you like a broken neck." The caller used obscene and vulgar language and told Mrs. Jessom to "stop trying to get a petition against the union" and to tell others to do the same. The caller also stated that the cars belonging to Mrs. Jessom's husband and other non-supporters of the union would get the same treatment that the mut got." The caller also threatened physical violence against Mrs. Jessom and her husband."

3. The record of these proceedings indicates that on August 27, 1974, the applicant filed an application for certification for the respondent's plant employees. On September 5, 1974, Mr. V. Eck, Vice-

President, replied to the application and indicated in the reply form under the heading "Other relevant statements" the word "none". At the initial hearing of this matter dated September 16th, 1974, no allegations of impropriety were raised by the representative for the respondent or by Mr. Eck. The Board at the hearing set aside the petition filed in opposition to the application in that it did not reflect the true and voluntary wishes of the signatories thereto. On September 17th a decision certifying the applicant trade union issued.

4. The evidence establishes that after the incidents of August 26, 1974, when Mr. Kenneth Dans received threatening notes and discovered that the wires to the steering column of his car had been cut Mr. Eck contacted the London police department. On August 29th after Dans received another note threatening his person, Mr. Eck called the police once again. The police on both occasions were furnished with the notes and specimen signatures extracted from the respondent's personnel files. On September 17, 1974, the police reported that there was no basis in fact for pressing criminal charges against any of the suspects indicated in those files. In the interim on September 5, 1974, Mr. Eck confronted Don Smith, an in-plant organizer, and accused him of having committed the impugned incidents. Mr. Eck had previously sought and obtained the advice of a consultant retained in early August, 1974, as to how he should approach the matter. Smith denied responsibility for the notes and has subsequently been cleared of any suspicion of committing the deeds.

5. The evidence further establishes that after the police investigation failed to yield a suspect an intensive investigation of the respondent's personnel files was directed by Mr. Eck. Another suspect was uncovered and upon advice of the respondent's corporate attorney a handwriting expert was retained to corroborate the suspicions. The handwriting expert concluded that Mr. Eck's suspicions were again incorrect. The same expert was retained however to conduct a thorough investigation of the respondent's files and ultimately concluded on November 13, 1974, that an employee engaged in the respondent's plant was the author of the anonymous notes. 1 In the interim on September 19, 1974, "the Jessom incident" came to Mr. Eck's attention. Bill Jessom told Mr. Eck that his wife had been in receipt of an anonymous and abusive phone call on September 6th where the caller threatened the well being of his family should he continue his efforts to secure a petition in opposition to the applicant trade union. Arrangements were made with the respondent's corporate attorney to interview Mrs. Jessom. As a result of this interview on September 26th, Mr. Eck was advised that the Dans incident was no longer an isolated event but a pattern of wrongdoing had been established raising some basis for concluding a suspicious course of conduct by the applicant trade union in its efforts to acquire bargaining rights. After securing permission from the respondent's head office in New Jersey, counsel was retained to proceed with an application for reconsideration on the basis of the allegations set out in paragraph 2 herein.

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1. At the hearing dated December 20th counsel for the parties agreed "in chambers" that in order to assure full protection of the civil rights of the alleged perpetrator his name should remain unmentioned on the record of these proceedings. Counsel for the respondent told the Board for purposes of the record that it would suffice for the respondent's purposes that the person named be considered by the Board as an employee in the bargaining unit at the relevant time of the applicant's organizational campaign and that he was identified as being the writer of the various notes in "the Dans incidents" by an expert handwriting expert retained by the respondent.

6. The Board's Rules on Practice and Procedure provides as follows with respect to the requirement to exercise "reasonable diligence" in the filing of allegations of improper conduct;

"S47(2) Where, in the opinion of the Board, a person has not filed notice of intention promptly upon discovering the alleged improper or irregular conduct, he shall not adduce evidence at the hearing of the application of such facts, excepts with the consent of the Board and, if the Board deems it advisable to give such consent, it may do so upon such terms and conditions as it considers advisable."

The Fleck Manufacturing Limited Case 62 CLLC ¶16,236 is the guiding principle with respect to the underlying rationale to the Board's requirements for promptness in the filing of allegations of impropriety. In a word the Board stated; (at p1047);

"....delayed and last minute allegations which lead to adjournments or cause prejudice, embarrassment or unnecessary expense to the other parties and which with reasonable diligence could have been made at a more timely stage of the proceedings will not be entertained except for good and sufficient cause."

7. In the circumstances described herein we are not satisfied that "good and sufficient cause" has been shown to persuade the Board at this late date to entertain evidence in support of the respondent's charges. It was incumbent upon the respondent after official notification by the Board's Registrar of the applicant's application for certification to notify the Board promptly of an intention to file allegations of impropriety. In this respect the Board finds that Mr. Eck knew of "the Dans incidents" on the day they occurred on August 26, 1974. In the respondent's reply dated September 5, 1974, filed under the signature of Mr. Eck no



indication is made of impending allegations or of the fact that the applicant's conduct was under review with the object of filing allegations of wrongdoing. On September 16, 1974, Mr. Eck attended the Board hearing and in consultation with counsel did not inform the Board of an intention to file allegations against the applicant pertaining to any improper conduct of its representatives during the course of the organizational campaign. The Board further finds that Mr. Eck involved himself personally in the investigation of the Dans incidents far in advance of the first hearing of this matter when he confronted Mr. Smith, an in-plant organizer, who immediately denied responsibility for the deeds. In short, the Board finds that the respondent never intended to file allegations prior to the first hearing of this matter on September 16, 1974. Furthermore, it was only after that hearing when a Board certificate granting the applicant bargaining rights appeared inevitable that an investigation of the Dans incident commenced in earnest. Furthermore even after the discovery of "the Jessom" incident on September 19th, the respondent delayed eleven days thereafter before filing allegations of impropriety. The Board finds that however sound was the advice that a pattern of improper conduct would be necessary to persuade us to re-open the case the long delay after discovery of "the Jessom incident" was simply inexcusable.

8. The Board therefore is not satisfied that reasonable diligence was exhibited by the respondent in the filing of its allegations of impropriety and dismisses them for being untimely. (see; The King Optical Limited Case OLRB M.R. January 1968 952; The Seaway Apparel Case OLRB M.R. May 1967 145; The MacLeod Stedman Limited Case OLRB M.R. September 1971 599; The National-Wide Interior Maintenance Co. Ltd. Case OLRB M.R. January 1972 96).

9. The Board in its decision dated December 17, 1974 reserved its decision on the timeliness of the respondent's charges for the reasons set out therein and proceeded to hear the respondent's allegations on its merits. Although it may appear superfluous for the Board to render an opinion on the merits of the allegations, we are convinced that it may serve some collective bargaining purpose to proceed to determine the issue. Such opinion, of course, is without prejudice to the applicant's rights in light of the "untimeliness" of the allegations.

10. At the outset, counsel for the respondent admitted to the Board that the case against the applicant was based on "circumstantial" evidence. Nevertheless it was submitted that after the evidence has been adduced through the witnesses called by the respondent the Board would reach, by inference, the conclusion that the applicant through its organizers engaged in conduct contrary to S61 of the Act. It would therefore follow that the evidence of membership filed in support of the applicant's claim for bargaining rights should be set aside and the decision granting a certificate revoked.

11. There are three events relied upon by the respondent in support of its allegations. They are "the Dans Incident" "the Jessom Incident" and "the Smith Conversation". The evidence is undisputed that on August 26, 1974, Kenneth Dans received two threatening notes to his person indicating that he would be sorry for not joining the U.A.W. The evidence is also clear that on the afternoon of August 26 during his coffee break, Mr. Dans discovered that the wires to the steering column of his car had been cut and that his lunch box damaged. And the evidence also establishes that a few days later on August 29th, a third note was found near Ken Dans' work bench, delineating a question mark with the words "I will killer you" written on top. Mr. Dans indicated that he was approached on two occasions by in-plant organizers to join the applicant trade union. The first time he refused. On the second occasion he relented and signed a membership card. In this regard, the applicant filed in support of its claim for bargaining rights an executed combination application card in the name of Kenneth Dans dated August 21, 1974. Afterwards Mr. Dans told a lead hand that he had joined the applicant and requested his help in getting the card back. Later that day Mr. Dans asked the organizer who had signed up for the refund of his dollar. He was assured that the card would be returned but was told it would take a week to process.

12. Mr. Mohamed Alkateeb, a security guard in the employ of the respondent, stated that in late August or early September he overheard a conversation in the respondent's plant washroom between Don Smith and other unidentified persons where Don Smith is alleged to have said "there will be more threatening notes and more damages to cars if the union is out or anybody signs a petition against the trade union."

13. Mr. Smith was called by the applicant trade union to adduce evidence of his knowledge of "the Dans affair". He recited that he had been falsely accused by Mr. Eck of having been responsible for the incidents a week or two after they occurred. He also testified that the alleged perpetrator of "the Dans Incident" was not one of the eight in plant organizers retained by the applicant to act on its behalf in signing up members. Mr. Smith withstood and remained unshaken after vigorous cross-examination by experienced counsel with respect to his overall participation as an organizer in the applicant's attempts to secure bargaining rights. And of greater significance Mr. Smith was asked the following question by counsel for the applicant:

"Did you ever at any time make a statement that there will be more notes and more damage to cars if anyone signs a petition against the union?"

In reply Mr. Smith stated:

"No, I never said it."

14. The Board heard in graphic detail the contents of an anonymous phone call received by Mrs. Jessom threatening the well being of her family should her husband continue his efforts to organize a petition in opposition to the applicant trade union. The phone call was made on September 6th, 1974 and purportedly constituted the incident that established the pattern of wrongdoing justifying the basis for the instant application for reconsideration. Indeed the evidence of Mr. Jessom indicates that he did not inform Mr. Eck of the incident until September 19th, 1974. Coincidentally, Mr. Eck was informed after a meeting of employees where he addressed members of the bargaining unit indicating that the respondent intended "to fight the union" notwithstanding the Board's imminent decision granting bargaining rights. The Board does not propose to detail the contents of the anonymous call nor the inexplicable reasons rendered by the Jessoms for not contacting the police for protection thereafter. The Board can only conclude that in absence of a credible explanation for their reticence, the substance of the phone call simply eludes belief. In any event if the phone call did take place, the Board cannot impute responsibility for the alleged threats to the applicant trade union on the basis of an anonymous telephone call.

15. In a like manner the Board cannot find the applicant responsible for "the Dans Incidents" based on "the hear-say" evidence of Mr. Alkateeb with respect to the contents of the alleged "Smith Conversation". (see; The Dupont of Canada Limited Case OLRB M.R. January 1961 360 at p361). In any event, the Board can find no reason to disbelieve the evidence of Mr. Smith who unequivocally denied the conversation attributed to him and whose testimony remained unshaken after vigorous cross-examination. The Board cannot conclude therefore that there exists any basis in fact for finding a link between the alleged perpetrator of the Dans Incidents and the activities of Donald Smith as an in place organizer and supporter of the applicant trade union.

16. The Board deplores the threats made to the person of Kenneth Dans and the damage to his property. Such activity is indicative of aberrant behaviour that can neither be condoned nor tolerated in society generally nor in the context of labour-management relations particularly. Nevertheless we cannot hold on the basis of the evidence before us that the applicant through its representatives, organizers and supporters was responsible for these misdeeds. In support of this conclusion the Board notes that of the seventy-five cards filed by the applicant in support of the application only two were executed after August 26, 1974, the date of the first incident. Indeed, the evidence indicates that Mr. Dans, himself, signed a card on August 21, 1974. Mr. Dans afterwards regretted his decision to join and was assured that his card would be returned. The Board cannot attribute any wrongdoing to the applicant for its failure to return the card especially when it had presumably been sent to Toronto for processing before this Board. In this regard the Board notes that the terminal date was set for September 6, 1974.



17. The Board therefore finds unequivocally that the allegations of intimidation and coercion filed against the applicant are without foundation. The application for reconsideration of the Board's decision granting the applicant bargaining rights for the respondent's employees is dismissed.

4058-73-M: United Steelworkers of America (Applicant) v. RIO ALGOM MINES LIMITED (INCLUDING BUT NOT RESTRICTED TO ATLAS STEELS COMPANY) (Respondent).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members O. Hodges and F. W. Murray.

APPEARANCES AT THE HEARING: B. Ormsby for the applicant; H. A. Beresford and J. F. Braithwaite for the respondent.

DECISION OF RORY F. EGAN, ALTERNATE CHAIRMAN, AND BOARD MEMBER O. HODGES: January 17, 1975.

1. This is an application under section 95(2) of The Labour Relations Act. The initial hearing was held before a panel of the Board under the chairmanship of J. D. O'Shea, Q.C. Subsequently, the parties agreed to have the matter disposed of by the panel as presently constituted.

2. The applicant applied for a determination as to whether Gary Doan, Peter Goss, Ronald Mundy and Gordon Moote were employees of the respondent under the Act.

3. The respondent took the position that Mr. Goss was a Methods Engineer and the other three persons named were Supervisors and that since all those classifications were specifically excluded under the provisions of the collective agreement in force between the applicant and the respondent, no question could arise with respect to them under the provisions of section 95(2).

4. The original panel issued a decision dated September 19, 1973 in which the Examiner was appointed. The terms of his appointment are as follows:

Mr. A. A. Morrow, Examiner, is therefore authorized to inquire into and report to the Board on the job classifications held by Gary Doan, Peter Goss, Ron Mundy and Gordon Moote and to inquire into whether the duties and responsibilities actually exercised by Messrs. Doan, Goss, Mundy and Moote are consistent with the job titles held by them or are substantially the same as

the duties and responsibilities of other persons who were excluded from the bargaining unit by reason of holding the same job titles.

5. The Report of the Examiner is dated September 19, 1974. It records the withdrawal of the request for determination of the status of Ronald Mundy under section 95(2) of the Act. It is important to observe that the Report also records the agreement of the parties that the examination would be treated as a "normal" application under section 95(2), and that the "normal" Examiner's inquiry would be conducted into the duties and responsibilities of the persons named.

6. The matter came on for hearing by the present panel, at which time the Board heard the representations of the parties with respect to the preliminary objections raised by the respondent and with respect to the conclusions which the Board should reach on the basis of the evidence contained in the Report of the Examiner.

7. As to the preliminary objections raised by the respondent, the Board is basically in accord with the position established in the City of St. Catharines Case, OLRB M.R. July, 1966, p. 270. That is to say that where the occupational classifications of the persons concerned have been specifically excluded by the terms of the collective agreement from the bargaining unit without qualification, an applicant has no remedy under section 95(2) during the term of the collective agreement.

8. The Board would also reiterate at this point that it recognizes that whether a person is an employee for the purposes of the Act is a separate issue from the question as to whether the person is covered by the terms of a collective agreement. The latter issue is one properly for the determination by arbitration while the former is the proper issue to be dealt with by the Board.

9. Because of the peculiar circumstances of this case, however, and having in mind particularly the fact that the evidence normally applicable to a section 95(2) case has, in any event, been placed before it, the Board for the guidance of the parties, proposes to deal with the merits of the application as if unaffected by the preliminary objections.

10. Having regard to the foregoing, the Board therefore finds, on the basis of all of the evidence contained in the Report of the Examiner and on the submissions of the parties with respect thereto, that Peter Goss, who is classified as a Methods Engineer, exercises managerial functions and is employed in a confidential capacity within the meaning of section 1(3)(b) of the Act and that consequently Peter Goss is not an employee of the respondent within the meaning of the Act.

11. On the same basis, the Board finds that Gary Doan, who is

classified as Supervisor of Manufacturing Budgets, exercises managerial functions and is employed in a confidential capacity within the meaning of section 1(3)(b) of the Act and that consequently Gary Doan is not an employee of the respondent within the meaning of the Act.

12. The Board finds, on the same basis, that Gordon Moote, who is classified as Shipping Supervisor, does not exercise managerial functions and is not employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(b) of the Act and he is accordingly an employee of the respondent within the meaning of the Act.

13. The question as to whether Gordon Moote properly falls within an excluded classification under the terms of the collective agreement is a matter to be decided by a board of arbitration constituted in accordance with the terms of the collective agreement.

DECISION OF BOARD MEMBER F. W. MURRAY: January 17, 1975.

1. I dissent.

2. I am in accord with the decision, except with respect to the majority's finding in paragraph 12.

3. I would have found that Gordon Moote, classified as a shipping supervisor, in the light of all of the evidence, does exercise a managerial function under section 1(3)(b) of the Act and accordingly should not be considered as an employee within the meaning of the Act.

6618-74-R: Union of Canadian Retail Employees, C.L.C. (Applicant) v. ZEHR'S MARKETS LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: M. Levinson, M. Green and D. Gilbert for the applicant; W. G. Gray, Q.C., and V. Barnet for the respondent; A. Taylor for the objectors.

DECISION OF RORY F. EGAN, ALTERNATE CHAIRMAN, AND BOARD MEMBER O. HODGES: January 17, 1975.

1. This is an application under section 55 of The Labour Relations Act in which the applicant alleges that the sale of a business has occurred between Loblaw Groceterias Co. Limited as seller and Zehr's Markets Limited as purchaser. The business in question is carried on at 385 Frederick Street, Kitchener.



2. The applicant submits that as the result of the sale the respondent is bound by the terms of a collective agreement between Loblaw Groceries Co. Limited and the applicant.

3. The applicant filed a document headed Statement of Particulars of Improper Conduct on which it said it would rely in support of the allegation that the manner of handling the transaction in question constitutes bad faith within the Board's reasoning in Aircraft Metal Specialties Ltd. case (OLRB M.R. September 1970 p. 702). The applicant submits that the Board should give weight to the history alleged in the Statement and grant successor status to the applicant.

4. It is common ground that Loblaw Groceries Co. Limited (hereinafter referred to as "Loblaws"), Zehrs Markets Limited, the respondent, and Giant Discount Limited, to which reference will be made later, are related companies within the Weston complex of companies.

5. During the course of the hearing an issue arose, inter alia, concerning the question of the shift, if any, of the evidentiary onus in cases arising under section 55 where the parties involved are related companies as in the present instance.

6. The applicant submitted that the Board should follow the statement contained in paragraph 13 of the Zehrs Markets Limited case (hereinafter referred to as the "Zehrs case") (1974) OLRB M.R. May p. 331. Paragraph 13 reads as follows:

Thus, where there is a relationship between the vendor and purchaser company which includes a corporate relationship or a family relationship, a reading of the Board's cases indicates that on the slightest evidence that there has been some form of transaction between the vendor and the purchaser, a presumption will arise in favour of the applicant trade union that a sale has taken place, and the onus is then cast on the vendor and purchaser companies to rebut that presumption; see e.g. Kem's Masonry [1964] OLRB M.R. December 470; Supercity Discount Foods Ltd. [1969] OLRB M.R. August 666; Aircraft Metal Specialties Ltd. [1970] OLRB Rep. 702; Supercity Discount Foods Limited [1970] OLRB Rep. 118; Woodway Structural Components [1971] OLRB Rep. 545; Dellelce Construction and Equipment and Dell Construction [1972] OLRB Rep. 60; Thorco Manufacturing Ltd. 65 CLLC ¶16,052.

7. The respondent objected to the application of the foregoing to

the present case. The respondent submitted that the Board should not follow the Zehrs case (supra) because, it argued, that case attempts to place the onus where the legislature does not put it. The respondent further argued that the person making the assertion of sale should carry the whole proof of its allegations.

8. The position taken by the respondent reflects the position taken by the Board in the Super City Limited case, OLRB M.R. May 1964 p. 93. In that case, the applicant urged that since the facts of the transaction lay peculiarly within the knowledge of the respondent purchaser the evidence ought to be adduced by the Board. The Board held, however, that the onus rested upon the applicant to produce before the Board the essential evidence upon which it sought relief under section 47a (now section 55). Far from accepting the "facts within the peculiar knowledge of the respondent" theory, the Board stated that the applicant could have called as witnesses officers or officials of the companies concerned and had them produce any documents that might be necessary.

9. The foregoing case was affirmed in a later decision of the Board in Super City Discount Foods Ltd. case, [1969] OLRB M.R. August 666. The decision was one reached by the chairman of the present panel. In a subsequent case involving the same parties (Super City Discount Foods Limited, [1970] OLRB M.R. May 118), a differently constituted panel of the Board found that a sale of a business had occurred. Counsel for the applicant in the present case, with forensic propriety but doubtful delicacy, advised the chairman herein, with an emphasis wholly unrelieved by reference to the precedent followed, that the Board in the latter case had found that he was wrong.

10. In the circumstances, we have felt it incumbent upon us to carefully study the cases cited in paragraph 6 above. We do not propose to deal with them in detail. We observe that in the Super City case last referred to above, the Board took into consideration the fact that the operations involved had been carried out by related companies. It also assumed, having regard to the nature of the relationship between the two corporate respondents and in the absence of any evidence which might lead to a contrary conclusion, that the transactions were covered by book entries. The Board points out again that "we are not concerned here with two unrelated companies" dealing at arm's length but with related companies whose transactions were so interrelated that no documentation was required. The Board then said that in those circumstances and although the exact nature of the transaction was left to speculation, there was an inescapable inference of a sale. There are further references in the case to the fact that the companies are related and this is regarded as an essential consideration in weighing the evidence adduced by the applicant. The reference to the absence of any evidence "which might lead to a contrary conclusion" is obviously related to a shift in the onus of proof.

11. The question of burden or onus of proof is dealt with extensively in Woodway Structural Components case [1971] OLRB M.R. 545. This case deals with a transaction between unrelated companies but, nevertheless, the references to onus are useful in the present circumstances, and we set out below the relevant paragraphs of that decision:

7. The expression "burden of proof" applies both to the burden of adducing evidence during the progress of a judicial or quasi-judicial proceeding and the burden of establishing an issue which remains to the end of the proceeding. The evidentiary burden can be described as the shifting burden whereas the burden of establishing an issue can properly be described as the legal burden. As a general rule the party upon whom the legal burden lies and who desires a tribunal to take action must prove its case to the satisfaction of the tribunal. This means that the legal burden of proving all facts essential to a claim rests on the party making the claim. In other words the proposition that "he who asserts must prove" refers to the legal burden wherein a party who is seeking relief must satisfy the tribunal concerned as to the legitimacy of his claim. At a particular stage of a hearing, a party who affirms the existence of a fact may have satisfied an initial onus as a result of which the evidentiary burden shifts to the other party to rebut the existence or otherwise of the fact established. The evidentiary burden may shift back and forth during the course of a hearing. In the end, however, the tribunal must be satisfied that the initiator of the proceedings, on the basis of the evidence submitted, has met the legal burden.

8. In general, the effect of "peculiar knowledge" is that it may mean that very little evidence is required to satisfy the evidentiary burden when it rests upon the party lacking such knowledge. This does not mean, however, that simply because knowledge is peculiar to one of the parties that the other is relieved of the burden of adducing some evidence with regard to the fact in question. However, where a party initiates proceedings requesting a tribunal to invoke the "fact peculiar within the knowledge..." rule, reference is being made to the evidentiary



burden and not necessarily to the legal burden, The latter burden rests throughout on the party seeking relief of the tribunal, unless the wording of the statute otherwise provides.

9. The nature of the relief requested by the applicant under section 47a necessitates establishing the existence of a sale, which is a positive assertion. There is no legislative directive in the language of section 47a that confers upon the Board the jurisdiction to require a respondent to adduce evidence, in the first instance, establishing that a sale has not transpired, even though this fact may be peculiarly within its knowledge, at least until the applicant has raised a presumption. ...

12. It should be remarked that the cases reviewed are consensual with respect to the overall or ultimate onus resting on the applicant to prove its case. There is no dispute as to that in the present case and the concern relates to the question of the shift in the evidentiary onus and the weight of evidence required to shift that onus from the applicant to the respondent.

13. The Woodway case (supra) decided that since the applicant had failed to adduce any evidence that would establish even prima facie the fact of a sale of business, a prerequisite for the relief which it sought, the application ought to be dismissed. That case is one, as we have already noted, which deals with a situation involving unrelated companies and stands for the proposition that in such circumstances the applicant must simply adduce prima facie evidence in order to shift the evidentiary burden to the respondent.

14. The Zehrs case, on the other hand, deals with the question in the situation where related companies are involved. It is clear from that case that the Board, because of the obvious possibility of the frustration, deliberate or otherwise, of the purpose of the legislation embodied in section 55 by reason of the very intimacy and exclusivism which is virtually inherent in closed transactions between related companies, felt compelled to shift the evidentiary onus to the related corporations on what the Zehrs case has called "the slightest evidence that there has been some form of transaction between the vendor and the purchaser". It goes without saying, of course, that the applicant must establish, as it has in the instant case, that there is a corporate family relationship between vendor and purchaser. It sought to be kept in mind also that the language accompanying the phrase "the slightest evidence" of a transaction used in the Zehrs case speaks of "a transaction" between a "vendor" and a "purchaser" and therefore

requires some evidence relating to such matters which is of such reasonable substance as to warrant the presumption referred to. The precise amount of such evidence may, of course, vary somewhat in each individual case.

15. The terms "vendor" and "purchaser" are, of course, terms of convenience only and are not meant to circumscribe the wide definition of sale contained in section 55. Subject to these minor explanations, we concur in the statements contained in paragraph 13 of the Zehrs decision and find it to be applicable in the present case.

16. We further find, upon applying the test indicated in the Zehrs case, that the applicant has adduced sufficient evidence of a sale within the broad meaning of section 55 to require the respondent to adduce evidence in support of its contention that there has been no sale of a business as alleged by the applicant.

17. The Registrar is accordingly directed to list this matter for hearing to entertain evidence and argument with respect to all matters raised in the application which remain outstanding.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: January 17, 1975.

I dissent.

I have had an opportunity of perusing the decision of the majority, but regret that I am unable to agree with either its conclusion or its reasoning therefor.

In my opinion, the decision neither reflects the legislative intent for section 55 of The Labour Relations Act nor (with some isolated exceptions) the historical jurisprudence of the Board in determinations under such section.

With respect, the isolated exceptions are the basis on which the majority make its determination.

It is trite to say, and is a truism, that the section does not differentiate between those companies where there is a corporate relationship and those companies where there is not such a relationship. That being so, I am of the opinion that, with the exception of the Super City Discount Foods Limited case [1970] OLRB Rep. 118, and certain obiter set out in the majority award of the Zehrs Markets Limited case, (1974) OLRB M.R. May p. 331, there is little foundation on which the majority may base its award.

In Super City Discount Foods Ltd. case [1969] OLRB M.R. August 666, at page 668, the Board stated, in discussing the onus under section 47a (now section 55):

16. As the Board stated in the Super City Limited cases, OLRB Monthly Report May 1969, p. 93, the onus rests on the applicant to produce before the Board the essential evidence upon which it seeks to base its claim for relief under section 47a of The Labour Relations Act. In the present instance, the Board finds that the essential evidence was not adduced. It is true that certain facts were presented, but these do little more than provide grounds for varied speculation as to the real nature of what took place with respect to the two stores involved. There are indications that the respondent companies may have been pawns in some kind of corporate chess game, but there is no evidence as to who the mover or movers might be. It is not, as the above cited case implies, for the Board to undertake an inquiry of its own into the matter. It relies upon the evidence presented to it at the hearing. The application is accordingly dismissed.

Similarly, in the Woodway Structural Components case [1971] OLRB Rep. 545 at pages 547, 548, the Board stated:-

9. The nature of the relief requested by the applicant under section 47a necessitates establishing the existence of a sale, which is a positive assertion. There is no legislative directive in the language of section 47a that confers upon the Board the jurisdiction to require a respondent to adduce evidence, in the first instance, establishing that a sale has not transpired, even though this fact may be peculiarly within its knowledge, at least until the applicant has raised a presumption. This is in contrast to the situation where an applicant is seeking relief under section 45a of the Act. By the provisions of that section, during the first year of a collective agreement entered into following voluntary recognition, where an employee in the bargaining unit covered by the agreement or a trade union representing any employees in the unit challenges the agreement, the legislature has directed that the onus of proof rests on the party up-



holding the agreement to establish that the trade union was entitled to represent the employees in the bargaining unit at the time the agreement was executed. We would mention in passing that in The Loblaw Groceterias Co. Ltd. Case 66 CLLC ¶16,078 at p. 893, the Board expressed its reluctance to interpret the Act in a manner that would appear to fly in the face of the language of the Act in the absence of a clear legislative intent to that effect.

10. Finally, with reference to the authorities cited by counsel for the applicant, they relate largely to the "fact peculiar within the knowledge..." rule as it applies to the construction of contracts for the carriage of goods and insurance against various types of loss. The applicant is asking the Board to apply generally a rule of evidence that owes its legitimacy to the interpretation of the language of a particular statute or contract giving rise to proceedings before a tribunal. Counsel for the applicant appears to have disregarded the fact that the applicability of the rule is rooted in the intent of the legislature.

I can only reiterate the finding of that Board that the nature of the relief requested by the applicant under section 55 necessitates establishing the existence of a sale, which is a positive assertion. There is no legislative directive in the language of section 55 that confers upon the Board the jurisdiction to require a respondent to adduce evidence in the first instance.

On the basis of the evidence presented by the applicant in the present case, I am unable to find that the evidence presented establishes the existence of a sale, and accordingly, I would dismiss the application.

I may say, in conclusion, that the procedure and ratio decidendi set out in the Super City Discount Foods Limited case (supra) and the Woodway Structural Components case (supra) have invariably been followed up until the present time.

6735-74-R: United Garment Workers of America (Applicant) v. H.D. LEE COMPANY OF CANADA LIMITED (Respondent) v. Amalgamated Clothing Workers of America (Intervener).

BEFORE: George W. Adams, Vice-Chairman, and Board Members E. Boyer and J.D. Bell.

APPEARANCES AT THE HEARING: Harold F. Caley, Mrs. E. Ross and Mrs. I. Chenaluk for the applicant; Keith Billings, Peter Gibson and Hughes Woods for the respondent; Martin Levinson, Frank D'Aquina and P. Stocco for the intervener.

DECISION OF THE BOARD: January 22, 1975.

1. Further to a decision of this panel dated November 21, 1974, a representation vote was taken of the employees of the respondent in the bargaining unit described in that decision.

2. This vote was conducted on December 12, 1974, and the parties consented to an immediate counting of the ballots cast.

3. Of the 41 ballots cast (excluding 3 segregated ballots) 27 of the ballots were marked in favour of the intervener and 14 of the ballots were marked in favour of the applicant.

4. Rule 44 of the Board's Rules of Practice reads:

44.-(1) Subject to subsection 2, the returning officer shall, upon the completion of the vote,

- (a) prepare a report of the vote;
- (b) serve a copy of the report together with a notice of the report in Form 43, 44 or 45, as the case may be, upon each of the parties;
- (c) serve the employer with an appropriate number of copies of the report and the notice; and
- (d) file a copy of the report.

(2) Where the Board or the registrar directs that the ballot box be sealed and that the ballots be not counted pending a further direction by the Board and the Board subsequently

directs that the ballots be counted, the returning officer shall, upon completion of the counting of the ballots,

- (a) prepare a report of the vote;
- (b) serve a copy of the report with a notice of the report in Form 46 upon each of the parties;
- (c) serve the employer with an appropriate number of copies of the report and the notice; and
- (d) file a copy of the report.

(3) The employer shall post the copies of the report and notice immediately upon their receipt and keep them posted upon his premises in conspicuous places where they are most likely to come to the attention of all employees who may be affected by the application until the expiration of the sixth day after the day on which the returning officer served the employer with copies of the report and the notice.

(4) Immediately after the employer has posted the copies of the report and notice under subsection 3 he shall file a return of posting in Form 47.

5. And Rule 45(1) of the Board's Rules of Procedure reads:

45.-(1) Subject to subsection 3, where a representation vote is taken after the hearing of an application,

- (a) a party; or
- (b) any employee or representative of a group of employees,

who desires to make representations as to any matter relating to the representation vote, or as to the accuracy of the report of the returning officer, or as to the conclusions the Board should reach in view of the report, shall file a statement of desire as prescribed



in Form 43 or 45, as the case may be, on or before the last day for the posting of the copies of the report and notices under subsection 3 of section 44.

6. It was established that on December 12, 1974 pursuant to Rule 44 the Returning Officer, L. Stickland, gave each of the representatives of the applicant, the respondent and the intervener a copy of his Report and an executed copy of Form 45. Form 45 reads in part:

1. Attached hereto is a copy of my report upon the representation vote herein held on the 12th day of December, 1974, under the direction of the Board dated that 21st day of November, 1974.

3. TAKE NOTICE that if you desire to make representations,

- (a) as to any matter relating to the representation vote; or
- (b) (where a pre-hearing representation vote has been held) in connection with the application;

you shall send to the Board a statement of desire to make representations which shall,

- i. be in writing signed by the person making the statement or his representative,
- ii. contain the names of the parties to the application,
- iii. contain a return mailing address, and
- iv. contain a statement as to whether you desire a hearing before the Board.

Your statement of desire must contain a summary of the representations you wish the Board to consider.

4. A statement referred to in paragraph 3 shall be sent to the Board so that,

- (a) it is received by the Board not later than the 19th day of December, 1974;
- (b) if it is mailed by registered mail addressed to the Board at its office, 400 University Ave., Toronto 2, it is mailed not later than the 19th day of December, 1974.

5. IF NO STATEMENT OF DESIRE TO MAKE REPRESENTATIONS IS SENT TO THE BOARD IN ACCORDANCE WITH PARAGRAPHS 3 AND 4, THE BOARD MAY DISPOSE OF THE APPLICATION UPON THE MATERIAL BEFORE IT ON ALL MATTERS EXCEPT AS TO THE RESULT OF THE VOTE WITHOUT FURTHER NOTICE TO THE PARTIES OR THE EMPLOYEES.

7. The Returning Officer's covering letter to the respondent reads:

Attached hereto are Form 45, Returning Officer's Report of Vote and Return of Posting Card (Form 47).

With respect to the enclosed Notices to employees, your attention is directed to Section 44, Subsections 3 and 4 of the Board's Rules of Procedure which reads as follows:

"(3) The employer shall post the copies of the Report and notice immediately upon their receipt and keep them posted upon his premises in conspicuous places where they are most likely to come to the attention of all employees who may be affected by the application until the expiration of the sixth day after the day on which the returning officer served the employer with copies of the notice.

(4) Immediately after the employer has posted the copies of the report and notice under subsection 3 he shall file a return of posting in Form 47."

8. And pursuant to the direction in this letter Mr. Peter A. Gibson, the Plant Manager of the respondent, posted copies of the Report and Notice on December 12, 1974 upon the premises of the respondent and returned Form 47 to the Board indicating that this had been done.

9. We have outlined the procedures of the Board following the taking of the representation vote in detail in order to emphasize that by December 12, 1974 all of the interested parties knew or should have known that they had until December 19, 1974 to make representations as to any matter relating to the representation vote. Paragraph 4 of Form 45 points out the date to them and paragraph 5 of the same form indicates that the Board may dispose of an application based upon the material before it as of that date.

10. On December 20, 1974 counsel for the applicant attended at the offices of the Board and filed a handwritten statement alleging that the intervener had violated the Board's "no propaganda" rule. The statement reads:

Applicant desires to make  
representations re violation by  
intervener of no propaganda rule  
and desires a hearing in this regard.

Only received Board's letter on  
December 18, 1974.

Particulars to follow.

11. The particulars followed on January 6, 1975 and read:

Further to my hand written letter of  
December 20th, 1974, the following are  
the particulars of the allegations that  
we wish to submit to the Board.

1. The no propaganda period for the vote which was held on December 12th, 1974, covered the period from mid-night Sunday, December 8th, 1974, until the vote.
2. During the period of time and in particular December 9th, 10th, and 11th, a supporter and organizer of the Intervener, one Eva Forsi, was circulating among the employees of the Respondent in the wash-room and in the lunch room, actively encouraging the employees to vote for the Intervener.



3. On Monday, December 9th, 1974, at approximately 8.30 a.m. Mrs. Forsi attempted to show a piece of paper which contained the list of proposals put forward by the Intervener to various employees, encouraging them to read the proposals and as a result thereof to select the Intervener and not the Applicant. This paper was subsequently distributed to employees in the lunch room on the same day.
4. Also on December 9th, 1974, at approximately 10.00 o'clock a.m., while in the wash room, Mrs. Forsi said to certain employees "the vote is on Thursday and I am sure that my Union will get in", and further "I am sure of my job, other suckers who vote United will probably not be working here".
5. On Tuesday, December 10th, 1974, between 10.00 o'clock a.m. and noon and while she was working in the warehouse of the Repondent, Mrs. Forsi began discussing the benefits of voting Amalgamated (the Intervener) as opposed to voting for the Applicant and at this time, in the presence of other employees, said statements such as the following:

"Amalgamated is offering an awful lot";

"The ones who do not vote for Amalgamated will be sorry, because if United gets in workers will not get one half of what they want";

and other statements intended to show the benefits of voting for the Intervener as opposed to voting for the Applicant which crystalized in the following:

"Don't forget Amalgamated all the way and United is going to go down".

6. Subsequent to the vote at a meeting called by the Intervener at the Voyageur

Restaurant, Mrs. Forsi was confronted with the charge of electioneering during the no propaganda period and at that meeting acknowledged that she was the one who had been electioneering.

Based on the above, therefore, the Applicant will submit that the Board should order a new vote in this matter as soon as possible.

12. Contrary to the statement of December 20, 1974, we have found that the applicant received the Report of the Returning Officer and Form 45 on December 12, 1974 and therefore the applicant failed to file its representations with the Board on or before December 19, 1974 as prescribed by Form 45.

13. At the outset of the hearing and in the light of this chronology of events, counsel to the intervener made two preliminary submissions. He first argued that all charges relating to the conduct of the representation vote should have been filed with the Board on or before December 19, 1974. Accordingly, he submitted that the applicant's charges were untimely and, having regard to the Pure Spring (Canada) Ltd. case [1964] OLRB Rep. Dec. 476, the Board ought not to entertain them. Alternatively it was argued that, in waiting to file its particulars, the applicant had contravened Rule 47(1) and (2) of the Board's Rules requiring the prompt disclosure of material facts and therefore the applicant should not be allowed to proceed with the matter. In this regard the intervener relied upon Fleck Manufacturing Ltd. 62 CLLC 16,236 and Seaway Apparel Ltd. [1967] OLRB Rep. No. 727.

14. It should also be noted that the intervener went on to deny the charges arguing that even if Mrs. Forsi made the statements alleged in the applicant's January 6, 1975 letter she was not an official of the intervener and she did not participate in the organizational activities of the intervener.

15. It's fair to say that the applicant gave no reason for its failure to file the charges with the Board by December 19, 1974, although its counsel did inform the Board of his efforts to gather particulars after December 20, 1974. However the main contention of the applicant was that, whatever the reasons for its delay, the intervener had experienced no prejudice. Furthermore, because the intervener's demand for particulars on January 6, 1975 was satisfied on that date, the applicant submitted that the intervener was now estopped from arguing that it has been prejudiced. Finally, the applicant submitted that if laymen are to be able to function before the Board, it must take a flexible approach to its procedures.

16. Additionally, it might be noted that the applicant contended that even if Mrs. Forsi was not a union official she was a supporter of the intervener and therefore it was alleged that the intervener had failed in its duty to communicate the "no propaganda" period to her.

17. At the hearing the Board relied upon the rationale found in the Pure Spring (Canada) Ltd. case (supra) and refused to entertain the applicant's charges. It is important to note that the Board may finally dispose of an application for certification at the conclusion of the six day period following the posting by the employer of both the Returning Officer's Report and the relevant form. And it follows that if the Board's procedure are to remain expeditious the Board must be able to rely upon its own deadlines. In other words, parties must be encouraged to comply with time limits set out in the Board's Forms and Rules of Procedure or otherwise the entire administrative process will become ineffectual through lethargy.

18. But this is not to deny that the Ontario Labour Relations Board and its procedures are designed to enable laymen to function before the Board. This feature of the Board makes the system of labour laws in the province more understandable, more acceptable and less costly to administer. If the Board were to take an unduly technical view of its procedures these values would be seriously impaired. This view was well put in Canadian General-Tower Limited [1968] OLRB Rep. Oct. 712 where the Board permitted the late filing of a Form 8 in support of membership documents that had been properly filed. It wrote:

Since Form 8 only identifies and substantiates the documentary evidence of membership which has been previously filed, this type of evidence is acceptable at the hearing of an application pursuant to the provisions of section 48(2).

The Board's Rules of Procedure are not designed as obstacles placed in the path of parties to a proceeding, but are intended to permit the Board to administer The Labour Relations Act in a manner whereby one party will not be able to unfairly gain a procedural advantage over the other to the prejudice of the other party. The Board's primary function in an application for certification is to determine the true wishes of the employees in the bargaining unit in the exercise of their right to choose a bargaining agent. This function is not properly exercised if the Board refused to



make the determination of the employees' wishes because of some technical irregularity which in no way creates an unfair advantage prejudicial to the rights of a party or prevents the Board from properly assessing the evidence.

On the facts of this case, we find that the applicant has not gained an advantage but on the contrary may have suffered a disadvantage as a result of the delay in taking the vote. There is no evidence that either of the parties has suffered any prejudice in these proceedings as a result of the late filing of form 8.

19. Therefore in cases of this kind the Board is confronted with a conflict between two values that lie at the heart of its administrative procedures - expedition versus informal flexibility. In the Canadian General-Tower Limited case (*supra*) the Board integrated these values by emphasizing that Form 8 only identifies and substantiates evidence of membership which had been previously filed with the Board. Thus the relative procedural importance of the document permitted the Board to emphasize the values of informality and administrative flexibility in coming to the conclusion it did. (This is not to deny that Form 8 is a very important substantive document). However there was no suggestion in that case that the Board would adopt the same balance in considering the timeliness of either membership evidence or petitions. These latter documents are too fundamental to and prevalent in the Board's procedures to apply the same test. More specifically, the test of prejudice does very little for administrative expedition and certainty, and were it applied to fundamental procedural documents in matters before this Board administrative speed would become history.

20. We believe that this conceptual framework explains the test articulated in the Pure-Spring (Canada) Ltd. case - a test that emphasizes the reasons for procedural non-compliance as oppose to the prejudice the non-compliance has caused to the other party. In this regard the report of the Board's decision reads:

Even though a party has failed to file its objections to a representation vote by the date fixed by the Board in Form 49, the Board has entertained such objections when that party has been able to satisfy the Board that, even with the exercise of reasonable diligence, alleged improprieties in the conduct of another party to the vote

only came to the objector's knowledge after the expiration of the time for making objections. In the instant case, however, no evidence was adduced to show that the respondent exercised diligence in making inquiries as to the conduct of the applicant or to explain why nearly a month elapsed between the date of the happening of the alleged offence and the filing of the charges, despite the fact that counsel for the respondent stated that the respondent knew of the alleged meeting shortly after it occurred and admitted that the respondent was suspicious as to the purpose of the meeting. In the absence of such evidence there is no basis upon which the Board, in the exercise of its discretion, could, at this time, entertain the charges made by the respondent.

Having regard to the late filing and all the circumstances, the Board is of the opinion that it ought not to entertain the allegations of the respondent contained in its letter of September 9, 1974.

21. Put another way, in cases of this kind dealing with a fundamental procedure of the Board, the Board must give paramount consideration to the speed and certainty of its procedures. Prejudice to another party is not a test that can accomplish this. Such a test does not provide a bright line for the channelling of documents and prejudice may have little or no relation to administrative expedition. Thus the test in this area emphasizes the reasonable diligence of the party asking the Board to amend the time limits and because the applicant failed to adduce evidence that would meet this test, the charges cannot be entertained. We can only conclude that by making inquiries with reasonable diligence the information contained in the applicant's letter of January 6, 1975 could have been filed with the Board by December 19, 1974, as stipulated by the Board's Rules.

22. Before disposing of the application it is necessary to deal with one final preliminary issue - an issue raised by the respondent. Counsel to the respondent informed the Board that he had not been retained until after the Board's decision dated November 12, 1974, ordering a representation vote. On being retained he examined the circumstances surrounding the application and quickly realized that the respondent is in a "build-up" situation and was so at the date of the application. He told the Board that at the date of the application the respondent employed 27

persons; at the time of the representation vote it employed 47 persons; it now employs 65 people; and it is anticipated in the next short while it will employ 120 to 130 employees. He therefore asked that the Board exercise its discretion under section 92(5) and order an additional representation vote in that, because of the "build-up", the previous representation vote did not establish the true wishes of the employees. This motion was refused.

23. Even if counsel for the respondent could establish that the respondent's operation in North Bay falls within the requirements of the Board's "build-up" principle (the principle is reviewed in B.F. Goodrich Canada Ltd. [1970] OLRB Rep. 655), because the doctrine has become a condition precedent to any vote being ordered, counsel is really asking the Board to reconsider its decision of November 21, 1974. For the reasons of administrative expedition and finality outlined above the Board has consistently taken the position that it will not reconsider one of its decisions unless a party proposes to adduce new evidence which could not previously have been obtained by reasonable diligence or a party wishes to make representations or objections not already considered by the Board that he had no opportunity to raise previously (see International Nickel Co. of Canada Ltd. [1962] OLRB Rep. Mar. 438, 63 CLLC 16,284). The respondent cannot meet either of these conditions and therefore its request under section 92(5) (if it is applicable) cannot be entertained.

24. This disposes of all of the outstanding issues and in accord with the results of the representation vote wherein more than 50 per cent of the ballots cast were cast in favour of the intervener, a certificate will be issued to the intervener for the bargaining unit described in paragraph 3 of the Board's decision of November 21, 1974, and the application of the applicant is dismissed.

25. The Registrar will destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before the expiration of such 30 day period.

6637-74-JD: DEEP FOUNDATIONS LIMITED (Complainant) v. United Brotherhood of Carpenters and Joiners of America, Local 18, Labourers' International Union of North America, Local 837 and Pigott Structures Co. Ltd. (Respondents).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H. J. F. Ade and P. J. O'Keefe.



APPEARANCES AT THE HEARING: W. McNaughton, W. Lardner and D. Miller for the complainant; Stanley Simpson and Tom Fenwick for Carpenters Local 18; A. M. Minsky for Labourers' Local 837; J. C. Thomson and L. M. Howes for Pigott Structures Co. Ltd.

DECISION OF THE BOARD: January 27, 1975.

1. The complainant has requested that the Board issue a direction under section 81 of The Labour Relations Act with respect to the assignment of certain work.
2. The United Brotherhood of Carpenters and Joiners of America, Local 18 (hereinafter referred to as "Local 18") has adopted the position that the Board does not have jurisdiction under The Labour Relations Act to entertain the complaint. Specifically, Local 18 alleged that at no time did it request from the complainant an assignment of work, nor did it request that the complainant hire carpenters to do the work which forms the subject matter of this dispute.
3. The work which forms the subject matter of this dispute involves lagging-type shoring. The complainant called its president William Ernest Lardner and its vice-president John David Miller as witnesses and Local 18 called its business agent Thomas Fenwick as a witness.
4. The Board heard considerable evidence surrounding the activities of Mr. Fenwick and the response of various persons to such activities. There is considerable conflict in the evidence given by the witnesses.
5. Mr. Lardner and Mr. Miller gave their evidence in a direct manner and their credibilities were not shaken on cross-examination. Mr. Fenwick also gave his evidence in a direct manner but on occasions during cross-examination his credibility was brought into question. The Board refers Exhibit 4 which was produced in evidence by Local 18. Initially, Mr. Fenwick testified that this two page document (Exhibit 4) had been prepared on October 2, 1974. However, upon cross-examination the witness changed his testimony and agreed that the second page of this document had not been prepared on October 2, 1974. Similarly, Mr. Fenwick initially stated during examination in chief that he prepared the first page of this document immediately after a meeting on October 2, 1974, between himself, Mr. Lardner and a Mr. Tarbutt, the president of Local 18. However, in cross-examination he changed his testimony and stated that the first page had been prepared after the meeting when he had an opportunity to compare notes with Mr. Tarbutt. In these circumstances, it is clear that Mr. Fenwick was not, as he initially claimed, the person who prepared the first page.
6. In our opinion, Mr. Fenwick's recollection of events which occurred in September and October of 1974 is not as reliable as the

recollections of the other two witnesses. For this reason, the Board accepts the testimony of Mr. Miller that he and Mr. Fenwick met at the job-site on October 1, 1974, in preference to Mr. Fenwick's testimony that such a meeting did not occur. In addition, where there is conflict in the testimony of the witnesses, the Board accepts the testimony of Mr. Lardner and Mr. Miller in preference to the testimony of Mr. Fenwick.

7. Moreover, quite apart from the credibility of the witnesses, the encounters between Local 18 and the complainant are entirely consistent with a claim by Local 18 to have the work in dispute assigned to carpenters rather than labourers. The explanation of the motivation behind such encounters as advanced by Local 18 - that Local 18 wanted the disputed work from Pigott Structures Co. Ltd. to be given to carpenters pursuant to its collective agreement with Pigott Structures Co. Ltd. does not ring true. Surely, if such was the motive of Local 18 the party to be approached would logically be the party which was subcontracting the disputed work, Pigott Structures Co. Ltd.

8. Having regard to the evidence before it and to the representations of the parties, the Board finds that Local 18 was requiring the complainant to assign particular work to persons in a particular trade union or in a particular trade, craft or class rather than to persons in another trade union or in another trade, craft or class within the meaning of section 81(1) of The Labour Relations Act.

9. Accordingly, the Board finds that it has jurisdiction to entertain this complaint.

10. The Board directs the Registrar to list this matter for continuation of hearing.

6823-74-U: The Canadian Workers Union (Complainant) v. THE BURLINGTON GOLF AND COUNTRY CLUB LTD. (Respondent).

- and -

6824-74-U: The Canadian Workers Union (Complainant) v. THE BURLINGTON GOLF AND COUNTRY CLUB LTD. (Respondent).

- and -

6825-74-U: The Canadian Workers Union (Complainant) v. THE BURLINGTON GOLF AND COUNTRY CLUB LTD. (Respondent).

- and -

6826-74-U: The Canadian Workers Union (Complainant) v. THE BURLINGTON GOLF AND COUNTRY CLUB LTD. (Respondent).

- and -

6927-74-U: The Canadian Workers Union (Complainant) v. THE BURLINGTON GOLF AND COUNTRY CLUB LTD. (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H.J.F. Ade and H. Simon.

APPEARANCES AT THE HEARING: G. Perly for the applicant; D. L. Brisbin for the respondent.

DECISION OF THE BOARD: January 30, 1975.

1. The complainant has filed a series of complaints under section 79 of the Act alleging that the grievors; namely, Michael Cole, Michael Speers, Paul Brechin, Albert Gregory and Ronald Fielde were discharged contrary to section 58(a) and section 70(1) of the Act.

2. At the commencement of the proceedings the parties agreed that the complaints be consolidated and heard together.

3. The parties also submitted to the Board an agreed statement of fact on some of the circumstances giving rise to the filing of these complaints. On those facts where agreement could not be reached viva voce evidence was adduced through witnesses called by the representative for the complainant. In this regard counsel for the respondent elected not to call any witnesses but confined his participation to evidence adduced through cross-examination of witnesses called by the complainant.

4. On September 30, 1974, the complainant was granted a certificate conferring bargaining rights for a group of the respondent's employees. The grievors named herein were employees represented by the complainant at the material time of their termination. The respondent was given written notice to bargain on October 7, 1974. Several bargaining sessions ensued with a view to entering into a collective agreement but were without success. Messrs. Cole and Speers were members of the complainants negotiating committee and participated in these sessions. Mr. H. Bell, general manager responsible for the respondent's personnel relations and Mr. F. Kehoe represented the respondent's interests.

5. Mr. Bell stated that on October 24, 1974, Mr. Michael Cole left the work premises without permission and failed to punch out his time clock. Mr. Bell related that Mr. Cole's excuse for his absence was because he was sick. Because this was not the first time Mr. Cole had left his job without permission the incident was reported to Mr. Keith Cardiff, President of the respondent club. A meeting was arranged the next day where Michael Cole's "personal problems" could be discussed and thereby remove the cause of his deteriorating work performance. It was intended that Mr. Bell and Mr. W. Cole the grounds superintendent and father of the grievor be in attendance. Michael Cole arrived at the meeting accompanied by Mr. Michael Speers. He insisted that Mr. Speers act as a witness on his behalf to the discussions. Mr. Cardiff was equally insistent that Mr. Speers leave the meeting. In order to arrive at a compromise Mr. Cardiff suggested that he and Mr. Cole have a private talk. That is to say, everyone would be invited to leave. This suggestion was rejected by Mr. Cole. As a result Mr. Cardiff became annoyed, and



after words were exchanged, dismissed everyone in attendance from his office. Later that day Mr. Cardiff agreed with Mr. Bell's recommendation that Mr. M. Cole's services be treated as terminated. By letter dated October 25, 1974, the respondent informed Mr. Michael Cole as follows:

"Our time records show that you punched in for work at 8:07 yesterday morning, and since we were unable to find you on the premises after 9 o'clock, and since you left the premises without authorization and without punching out, we interpret your action to constitute termination of employment by your own choice.

This is at least the second incident of this nature in which you have been involved. An incident of a serious nature occurred on August 22nd, 1974, where you booked off without authorization in mid-afternoon on a regular working day, where the Greens Superintendent was absent and which coincided with a complete work stoppage.

Under the circumstances, we accept your action as termination, and we enclose your cheque which includes your vacation entitlement of \$122.18, your O.H.I.P. form and your U.E.I. form 11-03.

Yours truly,

Hugh G. Bell,  
General Manager."

6. It appears some ambiguity arose as a result of this letter as evidenced by a letter dated October 28, 1974 from M. Cole to the respondent where it is suggested that the grievor had not resigned but had been discharged. In an attempt to remove the ambiguity Mr. Bell by letter dated November 4, 1974 indicated that "If such termination has not been effected by you, it has been effected by the club."

7. Mr. Bell related that on August 22, 1974 he was looking for a particular employee when he happened upon a group of the respondents employees "behind the barn drinking beer". Mr. Michael Cole was amongst them. He proceeded to check their time cards and noted that they had punched out without his authorization. At the time of the

incident, Mr. William Cole, the Course Superintendent, had taken a week off work. In absence of W. Cole, his son, Michael, performed the functions of a lead hand in that he was in charge of the grounds' crew. Mr. Bell decided to discharge Mr. Cole for leaving his job without permission as well as his general attitude towards his work performance. The respondent's directors appear to have initially endorsed Bell's action at a meeting dated August 22 where the minutes read: "Mr. R. Ransom and Mr. W. R. Fleming thought that Mr. M. Cole's suspension should be continued."

8. Upon William Cole's return, Michael was reinstated. Mr. William Cole told Mr. Bell that he could not carry on his duties as course superintendent without the assistance of his son. Since the "club championships" were being held that week-end it was the opinion of the respondent's directors that the respondent relent and reinstate Mr. Cole.

9. At all material times the respondent was in the process of implementing a programme to improve the grounds to its golf course. Dr. Nielson, chairman of the respondent's "Greens Committee" related that a \$15,000 investment was tied up in completion of the programme before cooler weather had settled in. Mr. William Cole had been offered a substantial bonus to complete the job by a certain date. In late October the work had not been completed and approximately \$1,000 worth of seed and fertilizer was still in storage. In late October, Mr. William Cole's services were terminated because of his apparent unreliability. On October 28, 1974, "The Greens Committee" recommended to the respondent's Board of Directors that the course improvement programme be contracted out. This recommendation was accepted and implemented.

10. Mr. Michael Speers expressed confusion with respect to his employment status as a result of the aborted meeting of October 25th in Mr. Cardiff's office. In any event he requested clarification of his status by letter dated October 28. The reasons for the confusion was explained by Mr. Bell in a reply letter dated October 29, and as a result thereof "to demonstrate the club's willingness to provide every possible evidence of good faith, you are instructed to report for work on Thursday, October 31, 1974 at 8:00 a.m.". Mr. Speers did report to work on that day. Nevertheless because there did not appear to be any supervisory staff present, Mr. Speers concluded that it was unsafe to continue to perform his duties and left the premises and punched out at 1:27 p.m. Coincidentally the time cards submitted as evidence herein indicate that Messrs. Gregory, Brechin, Biggs and Scozzari, punched out at the same time; 1:27 p.m. Mr. Ron Fielde punched out approximately an hour earlier at 12:34 p.m. Mr. Speers could not account for this coincidence and assured the Board that no prior discussions took place. When he couldn't find Mr. Bell to inform him of his concerns Mr. Speers proceeded to wait for Bell's return in front of the respondent's golf course where he observed the parading

of pickets until 5:00 p.m. that afternoon. He noticed Mr. Bell returned by car but did not see him at that time.

11. Mr. Ronald Fielde punched out at 12:34, on the afternoon of October 31, because he wasn't feeling well. He didn't get permission to leave from a supervisor because no one was there. He told Mr. Gregory that he was leaving because he was the employee with the most seniority. When he returned the next day he discovered his time card had been taken away. He was later informed by Mr. Bell that his services were terminated along with the rest of his colleagues for leaving the work premises without permission.

12. The grievors, M. Cole, P. Brechin, A. Gregory, were not called by the complainant to adduce evidence in support of the allegations set out in the complainant's complaint.

13. Mr. William Cole stated that on October 24, 1974, his son had complained that he was not feeling well. He nonetheless prevailed upon Michael to come to work and perform a specific chore. After completion of the job he would then be permitted to go home. Mr. W. Cole further stated that he had only worked three hours that day (between the hours of 7:00 a.m. and 10:00 a.m.) and found his son in bed when he arrived at home. He did not discover that M. Cole had not punched out until the next day.

14. The evidence discloses that shortly after M. Cole's termination pickets began to parade the entrance of the respondent's premises. On November 1, 1974, representatives of the respondent's negotiating committee warned the complainant's committee that it would refuse to meet unless the pickets interfering with the club's operations were removed. At a previous session the respondent committee was presented with a document entitled "Preliminary Collective Bargaining Agreement" whose terms provided (as amended) that "the employer shall rehire Robert Francis, Mike Cole...and Mike Speers...as of Monday, October 28, 1974 and they shall be considered to have never been laid off." (The names of M. Cole and M. Speers were superimposed in longhand over the typewritten document). Another Article provides that the employer will not engage in further lay-offs until a collective agreement is signed "to regulate these matters". And another article provides "that the union, for its part, agrees that there will be no illegal work stoppage and the company agrees that there will be no illegal lock-outs, while this agreement remains in force." On October 28, 1974, the respondent returned the document unsigned.

15. Mr. Keith Cardiff explained in his evidence that normally failure by an employee to punch his card when leaving the premises would be followed by an investigation to determine the accurate number of hours worked by an employee for payroll purposes. Mr. Bell told the



Board that in the past the respondent had not experienced difficulties with respect to its procedure on the punching out of time cards upon leaving the work premises. It was only until the Michael Cole incident that difficulty appears to have arisen and escalated into an issue between the parties at the negotiating table.

16. The complainant's argument is basically two-fold. It is submitted that the grievors were discharged for their union activity contrary to Section 58(a) of the Act. More particularly it is submitted that Michael Cole was known to the respondent's officers to be a member of the complainant's bargaining committee and resorted to the lame excuse of Mr. Cole's departure "without punching out" on October 24th for his discharge in order to disguise the real reason for the termination of his services. Alternatively it is argued that the evidence indicated that in the past failure by an employee to punch out a time card did not give rise to cause for discharge by the respondent. It therefore followed that applying this excuse as a reason for the discharge of M. Cole constituted a change in working conditions during the prohibited period contemplated by S70(1) of the Act. The representative for the complainant also argued with respect to the discharges of the other named grievors that the respondent had engaged in a ploy to remove supervisory staff from the work premises with a view to enticing the grievors to leave their jobs. And when they had left the excuse was thereby available to effect the discharges for leaving without authorization. Nevertheless the argument is made that the real reason for the discharges was to deplete the bargaining unit of employees represented by the complainant and thereby destroy the union.

17. Counsel for the respondent denied that the evidence supports the complainant's allegations that the grievors and M. Cole, particularly, were discharged for their union activity. Michael Cole was simply an inept employee whose work performance justified discharge. Indeed after the aborted meeting of October 24th, Mr. Bell's recommendation to terminate M. Cole's services was endorsed by Mr. Cardiff, the respondent's president. Counsel outlined the procedure that is normally followed with respect to getting to the bottom of personnel difficulties. The meeting of October 24th was intended to be a part of that process. When the meeting was frustrated by the insistence of Michael Cole to have Mr. Speers witness the deliberations, the respondent elected to dispense with Coles' services. Counsel asks the Board not to give any weight to the testimony of W. Cole where at the second hearing of this matter, evidence was adduced that Michael, indeed, was granted on the day in question, permission to leave the premises. With respect to the complainant's argument in reply to the absence of a past practice by the respondent in enforcing a "punch out" policy, counsel argues that the section 70(1) has no relevance to the traditional employer prerogative to discharge for cause. That is to say, the exercise of the right to discharge is a constant and immutable discretion that remains unfettered until otherwise limited by the entering into of a collective agreement.

18. The Board finds that the evidence does not support the allegation that Michael Cole was discharged for his union activity contrary to Section 58(a) of the Act. Rather the evidence as adduced through the testimony of witnesses called by the complainant support the proposition, that M. Coles' services were terminated in October, 1974 because he was an inept employee. The reason given at the time of his discharge in October was the grievors propensity to leave the working premises without the consent of his superiors. That reason appears to be consistent with the reason for his termination in August, 1974 for drinking beer when he should have been working. The Board further finds that Mr. Cole's failure or otherwise to punch the time clock upon leaving the premises is incidental to the cause of his termination. In this regard we do not accept as credible the testimony of Mr. William Cole. He stated that Michael Cole obtained his permission to leave the premises because he was sick. It was however at approximately the same time as his son's termination that Mr. W. Cole was discharged for his inadequate work performance. We also note that it was Mr. William Cole who secured Michael's reinstatement in August on the pain of resigning his services as course superintendent at a time of critical importance to the respondent's operations. Furthermore, the Board observes in reaching this conclusion that Michael Cole was not produced as a witness to these proceedings to support the proposition that his services were terminated as alleged in the complaint. In short, surely Michael Cole would have been in the best possible position to attest to whether or not good and sufficient reason existed for leaving the work premises on October 24, 1974.

19. The Board need not comment on the intended Legislative thrust of section 70(1) for purposes of disposing of the instant complaint. In finding that Michael Cole was not discharged for union activity the Board noted that his services were terminated for leaving the working premises without authorization. This reason appears to have been a fixed policy of the respondent both before and after notice to bargain was given by the complainant on October 7, 1974. That is to say, the treatment given Michael Cole both in August and October is evidence in support of the conclusion that his working conditions had not been altered during the prohibited period contemplated by S70(1) of the Act.

20. The Board does not find that the other grievors named herein were discharged as a result of a ploy enticing them to leave the respondent's work premises without authorization. Rather the evidence indicates that upon the complainant's failure to renegotiate the reinstatement of Michael Cole on the terms set out in the document referred to in paragraph 14 herein, other measures were resorted to. At 1:27 p.m. on the afternoon of October 31, 1974, several of the employees in the bargaining unit (including the grievors; Speers, Brechin and Gregory) punched out and left the respondent's premises for reasons attributed to hazardous working conditions created by the absence of supervisory staff. Mr. Fielde punched out an hour earlier at 12:34. At all material

times a picket line that had formed at the time of Mr. Cole's discharge continued to parade the front entrance of the respondent's premises. The evidence establishes that the respondent viewed these activities as "a walk out." And as a consequence of the withdrawal by employees of their services, the Board is satisfied that the respondent treated the grievors' services as terminated. Or, alternatively, the Board is satisfied that the respondent terminated the grievors' service for cause. In other words, we are not satisfied upon the evidence adduced that the respondent has violated the provisions of section 58 of the Act.

21. The complaints are therefore dismissed.

7161-74-M: Local 636, International Brotherhood of Electrical Workers (Applicant) v. THE REGIONAL MUNICIPALITY OF HALTON (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members F. W. Murray and E. Boyer.

DECISION OF THE BOARD: January 30, 1975.

1. This is an application filed under section 95(2) of the Act.

2. The applicant trade union alleges that certain named employees classified by the respondent as "inspectors" are employees and should be included in the bargaining unit covering "outside employees". More particularly, the applicant alleges:

"The union bases its' application on the fact that prior to the effective date of "The Regional Municipality of Halton Act" (January 1, 1974), employees of employers who were classified as "Inspectors" were included in "Outside" bargaining units. Subsequent to their transfer to the Regional Corporation, the Corporation has taken the position that some persons classified as Inspectors are suitable for inclusion in the unit, whereas other classes of Inspectors should not be included. The net result of this position being that some employees have been disenfranchised, and left bereft of Union representation."

3. In reply, the respondent employer refers the Board to a Board decision dated September 25, 1974, (See File No. 5091-73-R) where the Board in the exercise of its powers under section 55 of the Act declared the following bargaining unit appropriate for the purposes of collective bargaining;



"all employees of the respondent in its Maintenance and Operations Division of The Department of Public Works save and except foremen, persons above the rank of foreman, office, clerical and technical staff, and persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period."

4. As a result of the allegations set forth in the applicant's application and the Board decision referred to in paragraph 3 herein, the respondent submits,

"It is our respectful submission that there are a number of employees within the broad class of technical employees to which the Union refers and the majority of them have, in the past, been represented in a technical unit and that is where their community of interests is properly established. In addition, they are working within the Design and Construction Division, which is the Engineering and Technical Section of the Department. We are therefore of the opinion that the question raised by the Union is one which has already been properly decided by the Board in its order dated September 25, 1974, under file no. 5091-73-R."

5. Section 95(2) of the Act provides as follows:

"If, in the course of bargaining for a collective agreement or during the period of operation of a collective agreement, a question arises as to whether a person is an employee or as to whether a person is a guard, the question may be referred to the Board and the decision of the Board thereon is final and conclusive for all purposes."

6. The Board is satisfied having regard to the facts as set out herein and the provisions of section 95(2) of the Act, "that no question has arisen between the parties as to whether a person is an employee or whether a person is a guard", for purposes of The Labour Relations Act. We are therefore satisfied that the Board is without jurisdiction to proceed with the application and terminates the proceedings forthwith.

7. In this regard the applicant is referred to section 46(1) of The Board's Rules on Practice and Procedure.

6964-74-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. FRUEHAUF TRAILER COMPANY OF CANADA LIMITED (Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members H. Simon and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: L.A. MacLean, Gordon Parrer and B. Cherkover for the applicant; W. Gibson Gray and A. Purdon for the respondent.

DECISION OF THE BOARD: January 30, 1975.

1. This is an application for consent to institute a prosecution. The applicant alleges that the respondent has failed to bargain in good faith and has failed to reach a collective agreement contrary to section 14 of The Labour Relations Act. It further alleged that the respondent has interfered with the representation of employees by the applicant contrary to section 56 of The Labour Relations Act. The date of commencement of these alleged offences is said to be "on or about July 3, 1974 and continuing from day to day to the date hereof".

2. The applicant was certified by this Board on the 6th of April, 1974 for a bargaining unit of all office, clerical and technical employees of the respondent at its Dixie Manufacturing Plant in Mississauga. The applicant has represented the employees working in the plant at this location for some years.

3. Following a notice to bargain given by the applicant to the respondent, representatives of the applicant and the respondent held meetings in 1974, on May 24th; June 11th, 17th, 18th, 25th; July 3rd, 17th; August 8th, 15th, 22nd, 23rd; and November 4th, 12th, 20th, 26th.

4. A "No-Board Report" was received from the Minister of Labour dated July 30, 1974 following which a legal strike commenced on August 27, 1974. This strike is still in progress.

5. The applicant contends that the respondent's refusal to produce a wage rate schedule of the wage rates being paid to the individual employees in the bargaining unit constitutes, in the particular circumstances, a violation of section 14 of the Act. More specifically the applicant argues that this information is vital to both its ability to assess the respondent's proposals and to make proposals of its own. It further submits that the applicant has violated both section 14 and section 56 in sending a letter dated October 25, 1974 to all employees in the bargaining unit and in sending another letter dated September 13, 1974 to all employees working at the Dixie location. It is alleged that in writing those letters the respondent has attempted to deal directly with its employees and to disparage and undermine the applicant as the bargaining agent of the employees.

6. In applications of this kind, the applicant must only make out a prima facie case or establish an arguable point of law; (see Toronto Newspaper Guild and CCH Canadian Limited 74 CLLC 16,114). Thus, contrary to submissions by the respondent, the applicant does not have to establish a conclusive case warranting conviction.

7. The evidence establishes that the respondent has refused to provide the applicant with a wage rate schedule of the wage rates being paid to all of the individual employees in the bargaining unit. Having regard to all of the evidence before us the Board is of the opinion that the applicant has made out a prima facie case or established an arguable point of law in this regard. Accordingly, as requested by the applicant, the Board consents to the institution of a prosecution against the respondent on this basis.

8. However, the Board does not consent to the institution of a prosecution against the respondent based upon the applicant's allegation that by letters dated September 13, 1974 and October 25, 1974 the respondent has attempted to disparage and undermine the applicant as the bargaining agent or that it has attempted to "deal" with the employees directly. The letter of September 13, 1974, reads:

TO ALL STRIKING SALARIED EMPLOYEES - DIXIE

In the past few days we have been contacted by several of you expressing concern about the present status of the strike and stating a desire to return to work.

The offices are open for business and at this point your job is available for you just as it is for many of your fellow unit members who are already coming into work.

When you return to work you will be eligible for the increased salary ranges, merit increases, and cost of living allowance which were offered to the Union prior to the strike commencing. For your information the first payment of the cost of living allowance of \$63.38 was included in the September 15th pay cheques for those employees participating at work.

You should also be aware that regardless of whether or not you signed a Union membership card, you are entitled legally to return to work without interference if you so wish.



If you have any questions we are available to discuss these with you.

Yours very truly,

AP/jv                      A. Purdon,  
                                Industrial Relations Manager.

The letter of October 25, 1974 reads:

TO ALL FRUEHAUF HOURLY RATED EMPLOYEES - DIXIE

A portion of the office employees at Dixie went on strike more than eight week ago. Because this is affecting you and your employment with Fruehauf, we think you should have the following facts.

The UAW was certified to represent a group of 61 office employees -- less than half of our Dixie salaried staff. The vote conducted by the Ontario Labour Relations Board showed 32 employees voted to be represented by the Union and 28 voted for no Union. One ballot was not counted.

Following certification by the O.L.R.B. the Company entered into negotiations with the UAW and prior to the beginning of the strike had proposed to the Union a labour agreement for this office unit containing, among other things, provisions for the following:

- recognition of the UAW as bargaining agent for those jobs held by the 61 employees in the unit
- a 3 member committee to represent the unit
- grievance procedure
- seniority
- continuation of all the already existing monetary benefits in effect for salaried employees such as:

37 1/2 hour work week

overtime premium rates

paid holidays and vacation

educational assistance fund

paid sick leave

group insurance and retirement plan  
fully paid by Fruehauf already providing  
benefits at higher levels than in effect  
for hourly rated union employees

Personal Accident Insurance

Long Term Disability Insurance

- Cost of living allowance already in effect  
for non-union salaried employees, and also  
to extend salary ranges to the unit  
employees, increased approximately 12%
- a one year term for the first labour  
agreement

The Union has continually demanded a  
compulsory check-off of dues for all  
employees and compelling all new employees  
to join the Union as a condition of employ-  
ment. The Company believes this to be a  
matter of personal choice and offered to  
deduct Union dues from those employees who  
want to belong to the Union.

When the strike began, more than a third  
of the employees in the office bargaining  
unit reported to work and have continued to  
work. Since the strike began several of the  
striking employees have since quit their  
jobs with Fruehauf.

Contrary to certain statements attributed  
to Union officials, your Company is attempting  
to fulfill its obligation to those several  
hundred employees who have no direct involve-  
ment in this strike and who have a legal right  
and contractual responsibility to continue  
working.

Unfortunately, as a result of this strike, which affects the Company's ability to process the necessary paperwork to the plant, coupled with the numerous incidents of serious vandalism in the plant, the Company has had to discontinue second and third shift operations and lay off approximately 85 employees.

During this strike period, the windshields and windows of cars belonging to two female employees have been smashed at their homes. There have been several incidents aimed at intimidating plant and office employees in and out of the bargaining unit from continuing to exercise their democratic right to come to work.

The strike of approximately 30 individuals, members of the UAW, is attempting to close down the Company's plant and office operation.

Who do you think really has your interests at heart?

AP/jv

A. Purdon,  
Industrial Relations Manager.

9. Having regard to all of the evidence placed before the Board, while the letters reflect the respondent's appreciation of the events described herein, neither of the documents appear to contain any mis-statements. And it is important to note that the letter of October 25th, 1974 sent to all hourly rated employees, was written after there had been three work stoppages in the plant, and after approximately 85 plant employees had been laid off as a result, it is said, of the strike conducted by the office employees.

10. Section 56 of the Act prohibits an employer from participating in or interfering with the formation, selection or administration of a trade union or the representation of employees by a trade union, but it goes on to expressly stipulate that nothing in the section should be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, intimidation, threats, promises, or undue influence. Therefore, it cannot be said that an employer is prohibited from communicating with his employees as a matter of principle.

11. On the other hand because a trade union is certified as the exclusive bargaining agent of the employees in the bargaining unit and because section 14 obligates an employer to meet with this bargaining



agent and to make every reasonable effort to make a collective agreement, communications by an employer directly to his employees while collective bargaining is occurring must be viewed very carefully. Put another way, all such communications, while not per se unlawful, must be viewed against an employer's duty to bargain with the trade union and only the trade union - those communications inconsistent with this duty are unlawful. Thus it is useful to contrast the respondent's two letters with the sequence of events in two cases that exemplify improper direct communications. The two cases are R. & Davidson Rubber Co. Inc. (1969), 69 CLLC 14,190 and General Electric Co. (1964) 150 NLRB 192 enforcement granted (1969) 418 F 2d 736 (C.A. 2d Cir.), cert. denied (1970) 397 U.S. 965. In Davidson Rubber Co. Inc. (supra) the employer at the same time it was bargaining with the trade union, held a number of meetings with its employees and wrote a letter to them as well. Through these direct communications the employer offered the employees substantially more than it had offered them through negotiations with the trade union - in fact more than the trade union had initially requested. In addition even though the employer had taken a take it or leave it position throughout the negotiations with the trade union, the employees were informed by the employer that the union had prevented any improvement in employment conditions for the preceding eleven months of bargaining. In a lucid judgment reviewing both Canadian and American opinion on the matters in question Judge Morrison concluded that these communications could only have "the purpose of vilifying and maligning the intentions and the status of the union and its bargaining committee", and therefore went on to find that the employer had violated both section 14 and section 56 of the Act.

12. In the General Electric Co. case the employer communicated constantly with its employees during negotiations with the trade union in order to persuade them that management was genuinely concerned for their welfare, that its offers were fair, and that union demands were excessive, ill-considered and politically motivated. To convey this message the company relied upon letters, pamphlets, conversations with supervisors, meetings, TV ads, radio presentations, plant newspapers, etc. During the two months of bargaining, a typical employee in one of General Electric's larger plants was exposed to more than 100 separate communications having to do with the negotiations. The trial examiner concluded that this tactics when considered in the light of the employer's bargaining position as a whole, revealed an attitude inconsistent with the good faith bargaining required by the legislation.

13. We must find that the two letters before us are worlds from the fact situations found in Davidson Rubber Co. Inc. and General Electric Co. In contrast to the undermining nature of communications in both of those cases the letters of September 13, 1974 and October 25, 1974 are more properly characterized as informational or descriptive being in response either to questions that had been received by the respondent or to what it believed to be unfounded rumour. We do not see these

letters evidencing an attempt by the respondent to circumvent the applicant as the bargaining agent of the employees and none of the evidence that developed the collective bargaining background to these communications leads us to any other conclusion.

14. As a general matter the Board must be very careful not to insert itself, without hesitation, into the bargaining process as a censor of the communications between parties engaged in this often emotionally charged exercise. A more intrusive approach would provoke disruptive litigation over what is essentially unavoidable human nature. Furthermore we believe that reasonable employees and diligent trade unions have little difficulty evaluating and responding to most of the isolated direct communications that may occur during collective bargaining.

15. Therefore the Board refuses to grant its consent to a prosecution of the respondent based upon the letters of September 13, 1974 and October 25, 1974.

6868-74-U: Retail Clerks International Association (Complainant) v. LITTLE BROS. (WESTON) LIMITED (Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members D.B. Archer and F.W. Murray.

DECISION OF GEORGE W. ADAMS, VICE-CHAIRMAN, AND BOARD MEMBER F.W. MURRAY WITH BOARD MEMBER D.B. ARCHER DISSENTING IN PART: January 30, 1975.

1. In a decision dated January 6, 1975, the Board reinstated the grievor and indicated that its reasons for doing so would be detailed and forthcoming in the near future. Accordingly this decision represents the Board's reasoning in support of its ruling in the January 6, 1975 decision.

2. This is a complaint under section 58 of The Labour Relations Act wherein the complainant alleges that he was dismissed by the respondent contrary to that provision and requests that he be re-employed by the respondent with compensation for all monies or other benefits lost.

3. Section 58 prohibits the discharge of a person because he or she was or is a member of a trade union or was or is exercising any other rights under the Act and therefore the motivation of the employer in discharging an employee is exceedingly relevant. In other words an employer may discharge an employee unfairly or without cause and the Board would have no jurisdiction to remedy the situation unless the employer's actions can be said to be coloured by an anti-union animus (see Fisher-Price Toys (Canada) Ltd. [1968] OLRB Rep. 116).

4. But it is important to note the sole or principal reason for the discharge need not relate to protected activities under the Act.

For the Board's jurisdiction to be involved it is enough if protected activities played a part in the decision-making of the employer; (see Regina v. Bushnell Communications Ltd. et al, [1974] 1 O.R. (2d) 442; Olympia and York Developments Limited, [1973] OLRB Rep. 407; Canadian Linen Supply (Ontario) Limited, [1967] OLRB Rep. 100; and Int'l Molders and Allied Workers Union and Delhi Metal Products Limited, File No. 5482-74-U).

5. However the grievor must prove, by a pre-ponderance of probability that the employer has, in the manner alleged, discriminated against him contrary to the Act, and a plausible explanation by the employer may be all that is required for it to successfully defend against a complaint of this kind. But due regard must always be had to the context in which these complaints arise. An employer seldom admits to an unlawful motive in discharging an employee and a desperate employee may be only too willing to allege a violation of the Act in order to save his job. Therefore the Board has said that legitimate and reasonable inference may be drawn from all the evidence adduced and that which is clearly deductible from the evidence is as much proved as if it had been established by direct evidence; (see United Parking-house, Food & Allied Workers and Metropolitan Meat Packers Limited (1962), 62 CLLC ¶16,230 at p. 1,025). As a consequence a grievor by proving the contract of hiring, the dismissal and, most importantly, certain other objective facts and circumstances short of direct evidence of discrimination, may cast an onus of credible explanation on the employer who alone knows the actual reasons for the dismissal; (see National Automatic Vending Co. Ltd. (1963), 63 CLLC ¶16,278). The Board is very sensitive to the background of an employee's dismissal and it takes particular note of the timing of the dismissal, the full employment record of the grievor with the respondent, and the harshness or unreasonableness of the penalty if a cause for the dismissal is alleged as well as the consistency in the application of the penalty in such circumstances. All of these factors assist the Board in assessing the bona fides of the employer in terminating an employee. Where the good faith of an employer is thrown into question an anti-union animus often becomes the only logical explanation for the conduct that is the subject matter of a complaint.

6. The facts at hand present a classic illustration of the difficult inferential process that confronts the Board in cases of this kind. The grievor is fifty one years old married and has three children. He has worked in the automobile retail industry as a salesman, manager and independent businessman since 1951. From 1951 to 1957 he worked for Simpson Motors in Toronto as a salesman and General Sales Manager; from 1957 to 1962 he was in business for himself; in 1962 he was General Sales Manager for Park Lane Pontiac; in 1963 he worked again for Simpson Motors; from 1966 to 1968 he worked for the respondent; in 1968 he became the Finance Manager for Wood Larkin and Co. in Toronto; and in 1969 he



returned to the respondent where he was employed until the date of his dismissal on November 6, 1974. The Board heard a great deal of testimony depicting the grievor's accomplishments in the industry as a salesman and based upon his earnings record and all the awards and prizes he has received we conclude that he has been an outstanding salesman in the past, and in recent years based upon his income we conclude that he has ranged from an average to a clearly above average salesman. For instance in 1967 he was among the top fifty salesmen dealing in Ford Motor products in Canada and up to 1972 he had received a number of plaques and citations for meritorious sales performances. In 1973 he reported total earnings before taxes of \$17,042.58 and the following tables were submitted by the respondent to contrast his 1973 and 1974 performances. These tables only serve to confirm our assessment of the man's abilities and performances.

. . .

7. Table II indicates that Mr. Reid, the grievor, had not increased his income over the first nine months of 1974 as had the other salesman, but of the ten salesmen who appear in Table II he ranked sixth in income. Table I illustrates that Reid sold 134 units in 1973, the fifth highest total of the salesmen in that year and in 1974 (the first 10 months) he sold 104 units or the seventh highest total of the salesmen during that period. But his "fall" from fifth to seventh is misleading because only one unit separates him from the salesman who was fifth during the 1974 period. Table III reflects his sales performance in total units from 1970 through to 1974 and records second and third place standings during 1970, 1971 and 1972. Finally Reid explained that his 1974 April sales were nearly non-existent thereby affecting his income and unit production for 1974 and that this was the result of his disappointment in not being awarded a job in the finance section of the respondent's operations. But, by May he was clearly "back on his feet" earning approximately \$2,289.27 in gross commissions that month. A similar indication of his recovery was that he had the second highest number of deals written from September 26, 1974 to October 5, 1974, thereby winning the use of a 1975 Thunderbird until December 31, 1974 with 150 gallons of gas and this concludes the background to this complaint in the area of the grievor's sales performance with the respondent. He has a great deal of experience in the industry; he has been with the respondent continuously since 1969; and while employed by the respondent his sales performance must be characterized as at least satisfactory. In an industry where reliable and experienced salesmen are valued (a fact attested to by Mr. Ross Taylor, the General Sales Manager of the respondent) Reid's experience and sales performance in no way assists the respondent in defending the claim.

8. The grievor was dismissed on November 6, 1974 and, as noted above, the relationship of the date of dismissal to an employee's trade union activities is very material provided an employer has knowledge of the employee's trade union activities. The more immediate this relationship

is in a temporal sense the greater the need for the employer to present a credible explanation for its actions. In the facts at hand, the grievor was a spokesman for an informal employee association at the respondent's place of operation. And therefore it is not surprising that when the employees decided to join a trade union the grievor was asked by them to contact an official of the Retail Clerks International Association. This he did and on receiving a number of membership applications from an official of this trade union he proceeded to "sign up" eleven of his fellow employees from October 19, 1974 to October 22, 1974. An application for certification was then filed by that trade union in relation to those employees on October 23, 1974 and a certificate was issued by the Board dated November 12, 1974.

9. The respondent appears to have had no knowledge of Reid's particular role in the organizational campaign of the trade union but it knew he was a spokesman for the informal group or association of its employees, and by reason of important events that preceded November 6, 1974, it knew or at least assumed he was a spokesman for all those employees who had signed membership cards in the trade union. These preceding events need to be outlined in some detail.

10. On Thursday, October 31, 1974, following the posting of the notice of application for certification in the premises of the respondent, a meeting of employees was called for 5:00 p.m. It would appear that this meeting was called by Mr. Howard Balskey, the New Car Sales Manager of the respondent. In testimony Balskey said he thought he had a right to call the meeting because the bargaining unit description included him. But as he proceeded he admitted that his real purpose in calling the meeting was to discuss "why we had gotten to that stage". At this meeting, which lasted about five minutes, he proposed that another meeting be held at the Constellation Hotel where presumably over drinks and a meal the same topic would be discussed. The employees indicated that they did not want to meet with him or to discuss the proposed topic which explains the brevity of the Thursday meeting. But following it Mr. Bernard Janice, the Leasing Manager of the respondent, met with Mr. Jack Ivill (apparently another spokesman for the employees) either accidentally or by design, and it was decided that Mr. Janice would meet with Mr. Ivill, Mr. Bill McCurrie and Mr. Reid at the Constellation Hotel the next day (November 1, 1974) and that the meeting would be at Mr. Janice's expense.

11. The purpose and content of this meeting is not really in dispute. As did Mr. Balskey, Mr. Janice wanted to discuss "the pros and cons of how did we get to the point we were at". Janice told the Board he did this strictly on his own initiative but all three employees testified that while the talk was on a friendly basis they believed he represented management or more specifically Mr. Little Sr. Moreover it would appear that he made numerous references to "the old man" (Mr. Little Sr) throughout the discussions at the Constellation Hotel and predicted both



the respondent's and the industry's reaction to certification. For instance Janice told the three men that a union would be noticeable to all the members of the Toronto Automobile Dealers Association (hereinafter referred to as the "TADA") and more particularly a list of the respondent's employees would be sent around to the members and the employees would have difficulty getting employment again. We would further find that he mentioned the preparation of a letter that would enable the employees to "sign off" from the trade union. The meeting appears to have concluded after Reid asked Janice whether the respondent would have any objection to the informal association of the employees being certified as opposed to the Retail Clerks International Association. Janice said that he would "check it out" with his principal and get back to them.

12. Thus a second meeting occurred (on November 2, 1974) the next day and again at Janice's expense. During this meeting he reported that Mr. Little Sr did not want "an association recognized by the Department of Labour" and he went on to indicate that Mr. Little Sr would spend up to two million to break the union and that the TADA would back the respondent "morally and financially". He also told them that Ford corporate lawyers would lend their assistance to the respondent.

13. Janice admitted to making all or most of these statements but asserted that most of it was made up and that he did not intend to threaten the three men. In effect he viewed the meetings as a friendly discussion of mutual problems and nothing more. However, his position in management, and his admitted contacts with Little Sr and Howard Balskey make it difficult for the Board to segregate his actions from those of the corporate respondent. He is an official of the respondent and Howard Balskey had already made it clear that management wanted to talk over "how the men got to this stage". Furthermore we find it hard to believe that even during the first meeting Janice did not adopt the stance that he was speaking for the management of the respondent. During the second meeting this posture cannot be contested as he had contacted Little Sr in the interim and then outlined to the three employees the extent and quality of the opposition to be expected. Therefore we find that these two meetings establish both the respondent's knowledge of the grievor's interest in the certification application and the respondent's open hostility to the application going forward.

14. We now move to November 6, 1974 when Reid was discharged to examine the reasons the respondent relies upon in dismissing him from its employ. It is Reid's testimony that Mr. Ross Taylor, the General Sales Manager of the respondent, called him into his office and told him that he was fired for loaning a demonstration car without permission and for giving out what is called a "G & W" warranty in 1972. Reid further testified that Taylor prefaced his dismissal with the phrase "we were running the place" but Taylor denies having made this remark



and denies that Reid's trade union activity played any role in the firing. It was Taylor's evidence that on October 28, 1974 he discovered that Reid had loaned his "grounded" demonstrator to a customer and therefore it was not available to be viewed by one of Taylor's customers. Reid had told him that his demonstrator was loaned to another customer in that the customer's car had been brought into the dealership for body work. Taylor testified that he reprimanded Reid for loaning the car without permission but Balskey, who was present at the time, told the Board the reprimand consisted of a statement by Taylor that he could "get all the body work he needs". In any event, contrary to arrangements made then to have the car shown the next day Reid was unable to get the car back until October 30, 1974 and in the interim Mr. Taylor had to call a showing off for a second time.

15. Taylor told the Board that a second incident contributing to Reid's dismissal occurred on November 4, 1974 when Reid again failed to produce a demonstrator for a showing to be conducted by Janice. Reid had won the use of a Thunderbird until December 31, 1974 but it was understood that this car could be shown while in his possession and if it was sold it would be replaced. On November 4, 1974 Janice asked Taylor to provide him "with any Thunderbird other than Mr. Little's" to show to a customer at the Constellation Hotel that evening. Taylor asked Reid for his Thunderbird but he did not have it at work with him having brought in a customer's car for service. Arrangements to have either Reid's wife or the customer bring the car in were not possible and it was decided that Reid would take the car over to Janice's apartment that evening and they would switch cars. As it turned out the switch never took place. Reid had misplaced Janice's telephone number and when he got "bogged down" in traffic that evening he called the dealership for Janice's telephone number. On calling this number there was no answer and therefore he proceeded to the Constellation Hotel but could not find Janice. Janice testified that he was home all evening and did not receive any telephone call from Reid, but it was established that the switchboard at the dealership did not have his correct number. But whether Reid's story is truthful or not, Taylor told the Board that he did not think Reid's effort was sufficient. In other words Taylor felt Reid should have called him.

16. The last reason Taylor relied upon was the granting of a "G & W" warranty to a Mr. W.E. Raney in 1972 by Mr. Reid. In September of 1972 Mr. Raney purchased a 1972 Ford Mustang that had been used as a demonstrator. An "G & W" warranty was the warranty in operation prior to the "Ford A1 warranty" and it gave a customer fifteen per cent off both parts and labour for a specified period. It was Taylor's evidence that these warranties were never issued in relation to demonstrators subject to the balance of a new car warranty and in any event when one was issued it must appear on the sales agreement. It was established that Mr. Raney's car was a demonstrator and that the sales agreement showed no indication of

a "G & W" warranty. Moreover this particular warranty appears to have been issued for four years or 48,000 miles which Taylor claimed is unheard of in the industry. It was Taylor's evidence that this transaction did not come to his attention until November 5, 1974, a day Reid was away, and it is this transaction that represents the culminating incident.

17. Reid's evidence on the significance of these events differs drastically. A "grounded" demonstrator is one with the licence plates removed and washed up and Reid denied that the Pinto he was using prior to winning the use of the Thunderbird was a "grounded" demonstrator. It still had the licence plates on it and one set of keys remained in his possession. Furthermore he told the Board that he had been loaning his demonstrator out to customers during the entire period he has worked for the respondent and knew of no company policy requiring salesmen to seek the permission of management first. His testimony in this regard was more or less corroborated by three other experienced salesmen working for the respondent who had often loaned their demonstrators without permission although they seemed to indicate that this was done most often when a representative of management was unavailable.

18. As for the "G & W" warranty Reid testified that back in 1972 the proper work of the respondent was "less strick" and it was not unusual that a "G & W" warranty would be issued without appearing on a sales agreement and that it would be issued in relation to a demonstrator possessing the balance of a new car warranty. He saw the "G & W" warranty as a sales technique to keep customers coming back to the dealership and it was his evidence that at least in 1972 they were used liberally. The other salesmen who gave evidence had never given a "G & W" warranty in relation to a demonstrator and none of them knew of a "G & W" warranty that would be issued for four years or 48,000 miles. However all of them testified that they had given out basic "G & W" warranties without permission.

19. The particular "G & W" warranty issued to Mr. Raney had been used twice before Reid's dismissal. Its first use was on March 7, 1974 when it resulted in a \$17.36 reduction in the customer's repair bill. Mr. Reid specifically drew the warranty to the attention of the employee processing the bill and no complaint was made by management about this transaction. Its second use was on October 16, 1974 where it resulted in a \$5.99 reduction in Mr. Raney's repair bill. This bill was not paid immediately and Taylor drew this fact to Reid's attention during the third week of October, but no mention was made of the "G & W" warranty. Reid told the Board that after contacting the customer the bill was paid before the end of October and again nothing was said to him until he was fired on November 6, 1974.

20. The final fragment of evidence comes from the testimony of Reid and Bill McCurrie, one of the salesmen. They testified that after Reid had been fired they were walking out the back of the dealership when they



met Doug Turner, the Used Car Manager, and they told him what had happened. Turner is alleged to have said that he already knew and Bill McPhail was next. He went on to explain that at a manager's meeting held on November 4, 1974, it was decided that firing Reid was a calculated risk and the worse that could happen was that he would be reinstated and compensated. Counsel to the grievor told the Board that he tried to subpoena Turner but he was no longer with the respondent and could not be served. Taylor denied that any such meeting occurred and asserted that the decision to fire Reid was his and his alone.

21. At the beginning of this decision the Board adverted to the importance of the context in which cases of this kind arise. Seldom does an employer admit to anti-union motive in justifying the steps he has taken against an employee. The Board has to evaluate all the evidence carefully both in determining whether a grievor has presented sufficient evidence to place a burden upon the employer to come forward with a credible explanation and in assessing the plausibility of any explanation so tendered. Carefully approaching all the evidence before us in this case, within the legal structure outlined above, we must find that the grievor did present sufficient evidence to shoulder the respondent with such a burden and that the respondent has failed to meet this burden. The experience and sales performance of the grievor; the timing of the dismissal; the respondent's knowledge of Reid's involvement with the trade union; the open hostility to the trade union exhibited by Janice in relating information to the three representatives of the employees - information that can only be characterized as intimidatory; the failure of other employees to know of a company policy on the loaning of demonstrators; and the small amount of money and delayed reaction associated with the "G & W" warranty are the factors which have lead us to this conclusion. It is incredible that an experienced salesman would be terminated in the way Reid was for the causes suggested by Taylor. Reid had won the use of a Thunderbird and remained in possession of the keys to his Pinto. It was therefore natural for him to think that he continued to have some privileges in relation to the Pinto. Moreover, there is some doubt that the Pinto was grounded and judging from Balskey's evidence, Taylor did not reprimand Reid over loaning the car but rather because the car was not available at a particular time. No other serious expression seems to have been associated with the incident. In relation to the Thunderbird problem Taylor did not attempt to investigate Reid's story and the explanation given by Reid was so reasonable one cannot imagine an employee being in any way disciplined for the chain of events that transpired. The "G & W" warranty is of a more substantial nature in that none of the other employees who gave evidence had given such a warranty in similar circumstances. But the incident occurred in 1972; the total amount of money involved amounts to \$23.35; and there was no plausible explanation of why it only came to Taylor's notice on November 5, 1974. When all of this is placed beside the experience and performance of Reid, all of the reasons relied upon by the respondent appear more



ostensible than real. And then all of these factors must be considered in relation to their timing; to the meetings convened by Janice; and to the purported statement of Doug Turner. It is the juxtaposition of all of these events with the dismissal of the grievor that lead us to conclude that in dismissing the grievor the respondent violated section 58 of the Act.

22. This brings the Board to the issue of remedy. The grievor is to be immediately reinstated and he is to be given the use of a 1975 Thunderbird for a period of time equivalent to the period between November 6, 1974 to December 31, 1974, and to that portion of the one hundred and fifty gallons of gas that he had not used prior to the date of his dismissal. The Board retains jurisdiction to resolve any difficulties encountered in this latter regard.

23. The grievor, however, is not entitled to any other compensation. When an innocent party experiences a breach of contract he is immediately shouldered with a duty to take reasonable steps to mitigate his losses. In other words, he must avoid avoidable losses and the justification for this duty stems from the policy that the purpose of damages in contract is compensation not penalization; (see E. Allan Farnsworth, Legal Remedies for Breach of Contract (1970), 70 Colum. L. Rev. 1,145) The Board has taken a similar stance in exercising its discretion under section 79 of the Act to award compensation. It requires a complainant, who has been discharged, to take reasonable steps to mitigate his losses (see Metropolitan Meat Packers Ltd. 62 CLLC 16,230; Murray Bros. Limited [1969] OLRB Rep. Feb. 1,194; and De Carlo Shoe Co. [1965] OLRB Rep. June 224). The policy behind the imposition of this duty parallels that in contract. Section 79 used the word "compensation" and therefore if a duty to mitigate did not accrue to a grievor a monetary award given under section 79 would constitute something more than pure compensation. This is so in that the losses experienced by someone who does not attempt to mitigate are not, in a very real sense, all caused by the employer - a portion of the loss will stem from a grievor foregoing other income producing opportunities. To order an employer to compensate a grievor for this aspect of his losses would be to penalize the employer and section 79 is not designed to accomplish this end. If an individual wants to penalize an employer for a breach of the Act he must seek consent to institute a prosecution under section 90 and, if granted, section 85, upon the requisite proof, will accomplish the objective.

24. In the facts at hand, the grievor registered with the Unemployment Insurance Commission one month after he was discharged. There is no evidence that he registered with Canada Manpower and there is no evidence that he has engaged in a reasonable search for alternative employment. He was offered one job in Peterborough and requested work from one dealership in Toronto, but the latter did not need anyone. Counsel to the grievor suggested that an attempt to mitigate would have been futile because the grievor would have been "black listed" by all

the members of the TADA and, in any event, he argued that registration with the Unemployment Insurance Commission should be considered a sufficient act of mitigation. However there was no evidence that such a black list existed and the Board is not prepared to make such an assumption. The best test of Janice's assertion in this regard would have been for the grievor to make a reasonable job search. As for registration with the Unemployment Insurance Commission being a sufficient act of mitigation, in De Carlo Shoe Co. (supra) the Board appeared to view a personal canvass for alternative employment as important even though the grievor in that case had immediately registered with the Unemployment Insurance Commission. Moreover, Mr. Reid is a person with over twenty years experience in the retail automobile sales industry in Toronto and is probably better qualified to assess the existence of local job opportunities than a government agency. In fact, it has been held that the failure to register with Canada Manpower is not determinative of the issue of mitigation; (see Offset Make Up Limited [1969] OLRB Rep. Dec. 1,152). Therefore, in the facts at hand we cannot find the grievor's mitigatory actions reasonable and must deny him monetary compensation. In summary he is to be reinstated immediately and given the use of a Thunderbird as directed above.

DISSENT OF BOARD MEMBER D.B. ARCHER: January 30, 1975.

1. I agree with the Majority decision except on the issue of mitigation.
2. I believe that if a discharged employee registers with the Unemployment Insurance Commission as ready and available for employment, that is all the Board should require. To ask a discharged employee to go from one company employment office to another begging for work is to return to the "hungry thirties". If it could be shown he refused suitable employment I would have some sympathy with the majority.
3. The company wrongfully discharged the employee. If there is to be mitigation of the monetary penalty imposed on the company, surely the onus is on them to prove the employee has by his actions unnecessarily inhibited his changes of gaining alternate employment. Therefore, I would have awarded him the wages lost by his unjust dismissal.

#### ADDENDUM

1. After reading Mr. Archer's dissent on the issue of mitigation I feel a few comments are in order.
2. I do not disagree with his submission that the onus is on the employer to establish that a complainant or grievor has failed to mitigate. This is the common law test and similar policy considerations support the Board's adoption of the position.

3. In the facts at hand, where paragraph 24 of the decision points out that "there is no evidence that [the grievor] has engaged in a reasonable search for alternative employment", it should be noted that, in response to questions from both his counsel and counsel for the respondent, the grievor admitted that he had not looked for another job except as noted in the paragraph. Thus in regard to mitigation we had evidence before us to make the finding that the grievor had failed to mitigate his losses. The question of onus, in this sense therefore, did not arise.





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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JANUARY 1975

BARGAINING AGENTS CERTIFIED DURING JANUARY

No Vote Conducted

1469-71-R: Electrical Contractors Association of Toronto (Applicant) v. International Brotherhood of Electrical Workers, Local Union 353 (Respondent) v. Electrical Power Systems Construction Association (Intervener).

Unit: "all employers of journeymen electricians and apprentices for whom the respondent has bargaining rights in the Counties of York and Peel, and the portion of Halton County east of the Eighth Line and south of the MacDonald-Cartier Freeway (Highway 401) and the portion of Ontario County west of the Rouge River, in the province of Ontario in the industrial, commercial and institutional sector and the residential sector in the construction industry." (no employees in the unit). (HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES).

6019-74-R: Health Sciences Association of the Regional Municipality of Ottawa-Carleton (Applicant) v. St. Vincent Hospital (Respondent).

Unit: "all physiotherapists, occupational therapists, remedial gymnasts, speech therapists, clinical psychologists or psychometrists, therapeutic and/or non-supervisory administrative dietitians in the employ of the respondent in the Regional Municipality of Ottawa-Carleton, save and except for department heads exercising managerial functions and persons above that rank." (12 employees in the unit). (IN VIEW OF THE AGREEMENT OF THE PARTIES).

(1975) 2 OLRB M.R. - PAGE 15.

6122-74-R: Hotel and Restaurant Employees Union, Local 743 (Applicant) v. Ponderosa Steak House (A division of Foodex Systems Limited) (Respondent) v. Group of Employees (Objectors).

Unit #1: "all employees of the respondent at its Ouellette Avenue store in Windsor, save and except manager, assistant managers, persons above the rank of assistant manager, and persons regularly employed for not more than 24 hours per week." (46 employees in the unit).

(BARGAINING UNIT #2 - SEE CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE).

6171-74-R: Labourers International Union of North America, Local 183 (Applicant) v. Riverbank Developments Limited (Respondent) v. Group of Employees (Intervener).

Unit: "all employees of the respondent, engaged in cleaning and maintenance in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisors, security guards, office and clerical staff." (7 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS RESIDENT SUPER-INTENDENT ARE INCLUDED IN THE BARGAINING UNIT.).

6401-74-R: Carpenters' District Council of Toronto and vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233 (Applicant) v. Sagitta Development & Management Inc. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6551-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. BACM, B-A Construction Ltd., BACM Industries Limited, B.A.C.M. Limited (Respondents).

Unit: "all carpenters and carpenters' apprentices in the District of Kenora including the Patricia Portion in the employ of the respondents, B-A Construction Ltd. and B.A.C.M. Limited, save and except non-working foremen, persons above the rank of non-working foreman, and persons covered by the collective agreement between the applicant and B-A Construction Ltd. dated December 18, 1972." (18 employees in the unit).

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6675-74-R: Service Employees Union Local 204, affiliated with the AFL-CIO-CLC (Applicant) v. Commercial Caterers Limited (Respondent).

Unit #1: "all employees of the respondent at the Trillium Home for the Aged, Orillia, save and except Managers, persons above the rank of manager, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (5 employees in the unit).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

6730-74-R: Civil Service Association of Ontario (Inc.) (Applicant) v. The Salvation Army Grace Hospital (Respondent).

Unit: "all medical laboratory, radiology, respiratory, and ECG technologists and technicians employed by the respondent in Ottawa, save and except chief technologists, chief technicians, persons above the rank of chief technologist and chief technician, persons regularly employed for not more than 24 hours per week, students in training, students employed during the school vacation period, and persons covered by subsisting collective agreements." (22 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (...THE BOARD WISHES TO MAKE IT CLEAR THAT IT IS CONCERNED ABOUT THE FRAGMENTATION OF BARGAINING UNITS BROUGHT ABOUT BY AGREEMENT OF THE PARTIES IN APPLICATIONS INVOLVING HOSPITAL STAFF. THE MATTER OF HOSPITAL UNITS IS UNDER STUDY BY THE BOARD AND PARTIES OF INTEREST SHOULD BE FOREWARNED THAT THIS MAY RESULT IN REJECTION BY THE BOARD OF AGREEMENTS THAT TEND TO UNNECESSARILY FRAGMENT HOSPITAL BARGAINING UNITS FOR COLLECTIVE BARGAINING PURPOSES.).

6732-74-R: The Civil Service Association of Ontario (Inc.) (Applicant) v. The Peterborough Civic Hospital (Respondent) v. Ontario Physiotherapy Association: A branch of the Canadian Physiotherapy Association (Intervener).

Unit: "all lay technologists employed by the respondent in the Departments of Radiology and Nuclear Medicine in Peterborough, save and except Chief Technologists and those above such rank, students in training, students employed during the school vacation periods, office and clerical staff, persons regularly employed for not more than 24 hours per week and employees covered by subsisting collective agreements." (16 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

6736-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Windfields Place (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto engaged in cleaning and maintenance, save and except property managers, persons above the rank of property manager, security guards, office and clerical staff." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TWO EMPLOYEES CONCERNED ARE CLASSIFIED AS RESIDENT SUPERINTENDENTS AND THAT NEITHER OF THE EMPLOYEES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT.).

6780-74-R: Ontario Nurses' Association (Applicant) v. Extendicare Ltd. (Respondent).



Unit #3: "all registered and graduate nurses employed by the respondent in a nursing capacity at its Extendicare Nursing Centre in Ottawa, Ontario, save and except head nurse, persons above the rank of head nurse, and persons regularly employed for not more than twenty-four hours per week." (2 employees in the unit).

Unit #4: "all registered and graduate nurses employed by the respondent in a nursing capacity for not more than twenty-four hours per week at its Extendicare Nursing Centre in Ottawa, Ontario, save and except head nurse, persons above the rank of head nurse and persons regularly employed for not more than twenty-four hours per week." (31 employees in the unit).

Unit #5: "all registered and graduate nurses employed by the respondent in a nursing capacity at its New Orchard Lodge in Ottawa, Ontario, save and except head nurses, persons above the rank of head nurse and persons regularly employed for not more than twenty-four hours per week." (2 employees in the unit).

(BARGAINING UNIT #1 - SEE APPLICATION FOR CERTIFICATION DISMISSED - NO VOTE CONDUCTED).

(BARGAINING UNIT #2 & #6 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

6913-74-R: Canadian Union of Public Employees (Applicant) v. Stormont, Dundas and Glengarry County Roman Catholic Separate School Board (Respondent).

Unit: "all office, clerical and technical employees of the respondent in the United Counties of Stormont, Dundas and Glengarry, save and except managers, persons above the rank of manager, chief accountant, confidential secretaries and persons covered by a subsisting collective agreement." (93 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT (A) CONFIDENTIAL SECRETARIES SHALL INCLUDE 1. SECRETARY TO THE CHIEF EXECUTIVE OFFICER, 2. SECRETARY TO EXECUTIVE ASSISTANT TO THE CHIEF EXECUTIVE OFFICER, 3. SECRETARY TO THE CHAIRMAN OF THE SCHOOL BOARD, 4. SECRETARY TO THE BUSINESS ADMINISTRATOR AND TREASURER. (B) PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS ARE INCLUDED IN THE PROPOSED BARGAINING UNIT. (C) THE DIRECTOR OF STUDENT SERVICES, FRENCH SECTION, IS ABOVE THE RANK OF MANAGER.).

6961-74-R: Hotels, Clubs, Restaurants and Taverns Employees' Union Local 261 (Applicant) v. Hotel Le Quai D'Orsay (Respondent).

Unit: "all employees of the respondent at Ottawa, save and except supervisors, persons above the rank of supervisor, office staff, front desk clerks and persons regularly employed for not more than 24 hours per week." (33 employees in the unit)

6976-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Tor.-Ital. Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and The County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

7002-74-R: United Cement, Lime and Gypsum Workers International Union, A.F.L. C.I.O. C.L.C. (Applicant) v. Lincoln Quarries Division of King Paving & Materials Limited (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Niagara, save and except foremen, persons above the rank of foreman, office and sales staff." (13 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7009-74-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Brayshaws Steel Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen, and persons above the rank of non-working foreman." (2 employees in the unit).

7047-74-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. The Borden Company Limited (Respondent).

Unit: "all office and clerical employees of the respondent at Niagara-on-the-Lake, save and except office supervisors, persons above the rank of office supervisor, outside sales representatives and persons covered by a subsisting collective agreement." (4 employees in the unit).

7048-74-R: Mutuel Employees' Association, Local 528 (Applicant) v. The Ontario Jockey Club (Respondent).

Unit: "all persons employed in Admissions of the Ontario Jockey Club at the Greenwood Raceway, Queen Street East, Toronto, during its standard-bred operations, save and except supervisors, those above the rank of supervisor, those persons covered by subsisting collective agreements, office staff, and persons regularly employed for not more than 24 hours per week." (34 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BARGAINING UNIT WOULD BE DEEMED TO INCLUDE CASHIERS, USHERS, HANDSTAMPERS, CHECK ROOM ATTENDANTS AND DINING ROOM ELEVATOR OPERATORS.). (THE BOARD WISHES TO RECORD THE FACT

THAT THE BARGAINING UNIT AS OUTLINED ABOVE, TOGETHER WITH THE NOTE OF CLARIFICATION IS IN ACCORDANCE WITH THE AGREEMENT OF THE PARTIES, AND DUE TO THE PARTICULAR CIRCUMSTANCES OF THIS CASE, THE BOARD IS PREPARED TO FIND THAT THE BARGAINING UNIT AS PROPOSED BY BOTH OF THE PARTIES IS APPROPRIATE. THE AGREEMENT OF THE PARTIES ON THE DESCRIPTION OF THE BARGAINING UNIT DID NOT INCORPORATE AN AGREEMENT FOR THE EXCLUSION OF PERSONS WHO WERE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. HOWEVER, THE BOARD, IN ACCORDANCE WITH ITS USUAL PRACTICE HAS EXCLUDED THIS CATEGORY OF EMPLOYEES IN LIGHT OF THE REQUEST OF THE RESPONDENT FOR THEIR EXCLUSION.).

7049-74-R: Lumber and Sawmill Workers' Union, Local 2995 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Newaygo Forest Products, Limited (Respondent).

Unit: "all employees of the respondent at its Sawmill, Planing Mill and Yard Operations at Mead, Ontario, save and except foremen, those above the rank of foreman, sales and office staff." (78 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARIFICATION AND IN ACCORDANCE WITH THE AGREEMENT OF THE PARTIES THE BOARD NOTED THAT EMPLOYEES WHO WORK IN THE BOILER ROOM OF THE RESPONDENT ARE INCLUDED IN THE BARGAINING UNIT.).

7057-74-R: Carpenters District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233 (Applicant) v. Transway Steel Buildings Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT CARPENTERS AND CARPENTERS' APPRENTICES EMPLOYED BY THE RESPONDENT IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY ARE INCLUDED IN THE BARGAINING UNIT.).

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7063-74-R: Labourers' International Union of North America, Local 527 (Applicant) v. Centre Town Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).



7065-74-R: Central Ontario District Council, United Brotherhood of Carpenters and Joiners of America, Local Union 1304, 2480,2482 (Applicant) v. Scanti Investments Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Simcoe, the District of Muskoka and the Townships of Rama, Mara and Thorah in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

7070-74-R: Sheet Metal Workers' International Association, Local Union 537 (Applicant) v. Jeff Scott Mechanical Limited (Respondent).

Unit: "all sheet metal workers and sheet metal apprentices in the Counties of Brant and Norfolk, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

7075-74-R: Tridon Employees' Association (Applicant) v. Tridon Limited (Respondent).

Unit: "all employees of the respondent company at Burlington, save and except assistant supervisors, supervisors, persons above the rank of supervisor, office and clerical staff, sales staff, technical staff, quality control staff and students employed during the school vacation period." (184 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE TERM "TECHNICAL STAFF" INCLUDES BUT IS NOT LIMITED TO ENGINEERING TECHNICIANS AND OTHER SALARIED TECHNICIANS.).

7079-74-R: Ontario Nurses' Association (Applicant) v. Ottawa West End Villa Limited (Respondent).

Unit: "all registered and graduate nurses engaged in a nursing capacity employed at the Ottawa West End Villa Limited in the City of Ottawa, save and except the Director of Nursing." (12 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7082-74-R: Ontario Nurses' Association (Applicant) v. Central Park Lodge - Kitchener (Respondent).

Unit #1: "all registered and graduate nurses employed by Central Park Lodge - Kitchener, in a nursing capacity save and except the Nursing Supervisor, persons above the rank of Nursing Supervisor and persons regularly employed for not more than twenty-four hours per week." (9 employees in the unit).

Unit #2: "all registered and graduate nurses employed by Central Park Lodge - Kitchener, in a nursing capacity, regularly employed for not

more than twenty-four hours per week, save and except the Nursing Supervisor and persons above the rank of Nursing Supervisor." (3 employees in the unit). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT "NURSING SUPERVISOR" REFERS TO THE DIRECTOR OF NURSING).

7083-74-R: Ontario Nurses' Association (Applicant) v. Almonte General Hospital (Respondent) v. Employee (Objector).

Unit: "all registered and graduate nurses employed by the respondent in a nursing capacity in Almonte, save and except head nurses and persons above the rank of head nurse, director of nursing and the operation room supervisor." (29 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7085-74-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Rochefort Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Townships of Caldwell, Springer, Field, Badgerow, Hugel, Kirkpatrick and MacPherson in the District of Nipissing (excluding therefrom those portions of the Townships of Hugel, Kirkpatrick and MacPherson which are included within a thirty-five mile radius of the City of Sudbury Federal Building), save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

7087-74-R: International Association of Bridge, Structural & Ornamental Ironworkers, Local Union 759 (Applicant) v. Fred Barbini Limited (Respondent).

Unit: "all ironworkers in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

7093-74-R: United Steelworkers of America (Applicant) v. Fielding Lumber Company Limited (Respondent).

Unit #1: "all employees of the respondent at the Township of Waters in the Regional Municipality of Sudbury save and except foremen, persons above the rank of foreman, office and sales staff and persons regularly employed for not more than twenty-four hours per week." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all employees of the respondent at the Township of Waters in the Regional Municipality of Sudbury regularly employed for not more than twenty-four hours per week, save and except foremen, persons above the rank of foreman, and office and sales staff." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7094-74-R: The Civil Service Association of Ontario Inc. (Applicant) v. Welland County General Hospital (Respondent).

Unit: "all employees of the respondent employed in the mental health clinic in Welland, Ontario save and except the Department Administrator and those above such rank, office and clerical employees and persons covered by subsisting collective agreements." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7095-74-R: International Union, United Plant Guard Workers of America Local 1962 (Applicant) v. The Steel Company of Canada, Limited (Respondent).

Unit: "all security guards employed by the respondent at its Canada Works, 334 Wellington Street North in the Regional Municipality of Hamilton-Wentworth, save and except supervisors and those above the rank of supervisor and persons covered by a subsisting collective agreement between the company and the United Steelworkers of America, Local 3250." (7 employees in the unit).

7096-74-R: International Union, United Plant Guard Workers of America Local 1962 (Applicant) v. The Steel Company of Canada, Limited (Respondent).

Unit: "all security guards employed by the respondent at its Parkdale Works, Strathearne Avenue North in the Regional Municipality of Hamilton-Wentworth, save and except supervisors and those above the rank of supervisor and persons covered by a subsisting collective agreement between the company and the United Steelworkers of America, Local 5328." (4 employees in the unit).

7097-74-R: International Union United Plant Guard Workers of America Local 1962 (Applicant) v. The Steel Company of Canada, Limited (Respondent).

Unit: "all security guards employed by the respondent at its Frost Works, 250 Lottridge Street in the Regional Municipality of Hamilton-Wentworth, save and except supervisors and those above the rank of supervisor and persons covered by a subsisting collective agreement between the company and the United Steelworkers of America, Local 3561." (4 employees in the unit).

7103-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Ralph M. Moore Industrial Installations Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario engaged in the operation of cranes, shovels, bulldozers and similar equipment and



those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT OPERATING ENGINEERS EMPLOYED BY THE RESPONDENT IN THE INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL SECTOR OF THE CONSTRUCTION INDUSTRY ARE INCLUDED IN THE BARGAINING UNIT.).

7107-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Arthur G. McKee & Company of Canada, Ltd. (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Niagara and the County of Haldimand engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

7121-74-R: Local Union 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. Canada Catering Co. Limited (Respondent).

Unit: "all employees of the respondent employed in the cafeteria at the Molson's Brewery (Ontario) Limited plant in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, head cook and students employed during the school vacation period." (15 employees in the unit).

7122-74-R: Canadian Union of Public Employees (Applicant) v. Pembroke General Hospital (Respondent).

Unit #1: "all employees of the respondent at Lorrain Centre in Pembroke, save and except supervisors, persons above the rank of supervisors, psychiatrists, social workers, persons covered by subsisting collective agreements, persons who are regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (6 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all employees of the respondent at Lorrain Centre in Pembroke who are regularly employed for not more than twenty-four hours per week or who are students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor, psychiatrists, social workers and persons covered by subsisting collective agreements." (3 employees in the unit).

7129-74-R: Retail Clerks Union, Local 486 (Applicant) v. Great Universal Stores of Canada Limited (Respondent).

Unit: "all employees of the respondent at Vanier, Ontario, save and except store manager and persons above the rank of store manager." (12 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7132-74-R: Sheet Metal Workers' International Association Local Union #540 (Applicant) v. General Fabricators Co. Limited (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen and project foremen, persons above the ranks of foreman and project foreman, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (57 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7133-74-R: Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 124 (Applicant) v. Hull-Ottawa Drywall Construction Co. Ltee. (Respondent).

Unit: "all plasterers and plasterers' apprentices in the employ of the respondent in the Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

7141-74-R: International Leather Goods, Plastics and Novelty Workers' Union, Local 8 - C.L.C. - Toronto (Applicant) v. Elan Traders (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen or foreladies, persons above the rank of foreman or forelady, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (23 employees in the unit).

7142-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. M. J. Finn Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Townships of Hope, South Monaghan, Alnwick and all lands south thereof in the United Counties of Northumberland and Durham, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

7143-74-R: International Association of Machinists and Aerospace Workers (Applicant) v. Elgin Labour Centre Incorporated (Respondent).

Unit: "all employees of the respondent save and except manager, persons above the rank of manager and office payroll clerk." (2 employees in the unit).

7163-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. E & E Seegmiller Limited (Respondent).

Unit: "all employees of the respondent in the Counties of Brant and Norfolk engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

7167-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. E & E Seegmiller Limited (Respondent) v. Teamsters, Chauffeurs, Warehousemen and Helpers, Local 141 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Intervener).

Unit: "all employees of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (19 employees in the unit).

#### Applications Certified Subsequent to Pre-Hearing Vote

6223-74-R: Service Employees Union Local 204 Affiliated with AFL, CIO, CLC (Applicant) v. Wellesley Hospital (Respondent) v. Group of Employees (Objectors).

Unit: "all office and clerical employees employed by the respondent in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, secretaries to the Executive Director, Administrator, Assistant Administrators, Medical Directors, Director of Nursing Service, Director of Hospital Systems Research, Director of Personnel, Physician in Chief, Secretary to the Medical Advisory Committee, persons regularly employed for not more than twenty-four (24) hours per week, students employed during the school vacation period and persons covered by subsisting collective agreements or certification." (346 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE FURTHER AGREEMENTS OF THE PARTIES TO THE EFFECT THAT: (A) THOSE PERSONS CLASSIFIED AS "SECRETARIES TO MEDICAL DOCTORS" AND "SECRETARIES TO THE UNIVERSITY OF TORONTO MEDICAL STUDENTS WORKING AT THE HOSPITAL" EXCEPTING THE PERSON OCCUPYING



THE CLASSIFICATION OF "SECRETARY TO THE PHYSICIAN IN CHIEF", ARE EMPLOYED BY THE RESPONDENT AND SHARE A COMMUNITY OF INTEREST SUFFICIENT TO WARRANT THEIR INCLUSION IN THE SAID BARGAINING UNIT; (B) THOSE PERSONS ORIGINALLY CLASSIFIED BY THE OBJECTORS AS "SECRETARIES TO THE PERSONNEL DIRECTOR" WERE IMPROPERLY CLASSIFIED AS SUCH AND THEY ARE THEREFORE APPROPRIATE FOR INCLUSION IN THE SAID BARGAINING UNIT;...).

Number of names of persons on revised voters' list		236
Number of persons who cast ballots	194	
Ballots segregated and not counted	3	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	117	
Number of ballots marked against applicant	73	

6801-74-R: Office and Professional Employees International Union (Applicant) v. The Stormont, Dundas and Glengarry County Board of Education (Respondent).

Unit: "all office, clerical and technical employees of the respondent in the Stormont, Dundas and Glengarry school division, save and except, supervisors and persons above the rank of supervisor, persons regularly employed for not more than twenty-four hours per week and persons covered by subsisting collective agreements." (116 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		121
Number of persons who cast ballots	114	
Ballots segregated and not counted	3	
Number of ballots marked in favour of applicant	70	
Number of ballots marked against applicant	41	

6921-74-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Class Freight Lines Limited (Respondent) v. Brewery Workers Local Union Number 173 and the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America (Intervener).

Unit: "all employees of the respondent working in or out of Kitchener-Waterloo, Ontario, save and except foremen, persons above the rank of foreman, dispatcher, office staff and persons regularly employed for not more than twenty-four hours per week." (10 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list		9
Number of persons who cast ballots	9	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	5	
Number of ballots marked in favour of intervener	3	

6929-74-R: United Steelworkers of America (Applicant) v. The Borden Chemical Company (Canada) Limited (Respondent) v. Canadian Union of Operating Engineers, Local 101 (Intervener).

Unit: "all stationary engineers and persons primarily engaged as their helpers in its employ in the Boiler Room at its plant at 595 Coronation Drive in Metropolitan Toronto, save and except the Chief Engineer and those above the rank of Chief Engineer." (4 employees in the unit).

Number of names of persons on voters' list		4
Number of persons who cast ballots	4	
Number of ballots marked in favour of applicant	4	
Number of ballots marked in favour of intervener	0	

6966-74-R: Canadian Union of Public Employees (Applicant) v. Country Place Nursing Home Limited (Respondent).

Unit: "all employees of the Respondent at Richmond Hill save and except Administrator, Professional Medical Staff, Graduate Nursing staff, under-Graduate Nurses, Graduate Dietitians, Student Dietitians, Technical personnel, The Supervisor of Housekeeping Supervisor of Dietary and persons above the rank of Supervisor, office and clerical personnel, students employed during the school vacation period and persons regularly employed for not more than twenty-four hours per week." (52 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		34
Number of persons who cast ballots	24	
Number of ballots marked in favour of applicant	20	
Number of ballots marked against applicant	4	

6969-74-R: United Electrical, Radio and Machine Workers of America, (UE) (Applicant) v. Canadian General Electric Company Limited (Respondent).

Unit: "all employees of the respondent at Burlington save and except foremen, those above the rank of foreman, office, technical and sales staff and persons regularly employed for not more than twenty-four hours per week." (20 employees in the unit).

Number of names of persons on voters' list		21
Number of persons who cast ballots	21	
Number of ballots marked in favour of applicant	16	
Number of ballots marked against applicant	5	

6994-74-R: Canadian Union of Operating Engineers (Applicant) v. York Finch General Hospital (Respondent) v. International Union of Operating Engineers Local 796 (Intervener).

Unit: "all stationary engineers and persons primarily engaged as their helpers employed by the respondent in its boiler room, in Downsview, Ontario, save and except the Chief Engineer and persons above the rank of Chief Engineer." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list		5
Number of persons who cast ballots	5	
Number of ballots marked in favour of applicant	3	
Number of ballots marked in favour of intervener	2	

7014-74-R: Canadian Union of Operating Engineers (Applicant) v. Continental Can Company Limited (Mount Dennis Branch) (Respondent) v. International Union of Operating Engineers Local 796 (Intervener).

Unit: "all Stationary Engineers, and persons primarily engaged as their helpers employed by the Respondent at their Mount Dennis Branch in Metropolitan Toronto." (4 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list		4
Number of persons who cast ballots	4	
Number of ballots marked in favour of applicant	3	
Number of ballots marked in favour of intervener	1	



7021-74-R: The Civil Service Association of Ontario Inc. (Applicant)  
v. Sault Ste. Marie General Hospital (Respondent).

Unit: "all medical laboratory technologists, technicians and assistants employed by the respondent in its department of medical laboratory in Sault Ste. Marie, Ontario, save and except charge technologists, persons above the rank of charge technologists, students in training, office and clerical employees, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and persons covered by subsisting collective agreements." (30 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on the voters' list	19
Number of persons who cast ballots	16
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	6

#### Applications Certified Subsequent to Post-Hearing Vote

6476-74-R: The Civil Service Association of Ontario (Inc.) (Applicant)  
v. Sudbury Memorial Hospital (Respondent) v. Ontario Nurses' Association (Intervener).

Unit: "all Radiology Technicians and Radiology Assistants in the Radiology Department of Sudbury Memorial Hospital in Sudbury, save and except the Assistant Chief Technician, office and clerical workers, students, persons regularly employed for not more than twenty-four hours per week, students employed during school vacation period, and persons covered by subsisting certificates issued by the Ontario Labour Relations Board." (17 employees in the unit). (THE BOARD DIRECTED THAT THE BALLOT BOX CONTAINING THE BALLOTS CAST IN THE REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING A FURTHER DIRECTION BY THE BOARD).

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	10
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	0

6477-74-R: International Brotherhood of Painters and Allied Trades Local Union 1891 (Applicant) v. York Lathing Limited (Respondent) v. Marble Masons, Tile Layers, Terrazzo Workers Union No. 31 affiliated with the Bricklayers, Masons and Plasterers International Union of America (Intervener)

Unit: "all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario." (19 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

Number of names of persons on voters' list	10
Number of persons who cast ballots	8
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	3

6562-74-R: Christian Labour Association of Canada (Applicant) v. Fairwin Construction Company Limited (Respondent) v. Laborers' International Union of North America - Local Union #597 (Intervener #1) v. United Brotherhood of Carpenters and Joiners of America, L.U. 397, Whitby (Intervener #2).  
- and -

6563-74-R: Laborers' International Union of North America Local Union No. 597 (Applicant) v. Fairwin Construction Company Limited (Respondent) v. Christian Labour Association of Canada (Intervener #1).

Unit: "all construction labourers, carpenters and carpenters' apprentices in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	8
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	2

6591-74-R: The International Brotherhood of Electrical Workers Local 556 (Applicant) v. Hydro Electric Commission of Port Colborne (Respondent).

Unit: "all office, clerical, technical and sales employees of the respondent save and except superintendents, persons above the rank of superintendent, the secretary to the manager, and employees covered by the subsisting collective agreement covering "outside" employees." (12 employees in the unit).

Number of names of persons on voters' list		7
Number of persons who cast ballots	7	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	1	

6675-74-R: Service Employees Union Local 204, affiliated with the AFL-CIO-CLC (Applicant) v. Commercial Caterers Limited (Respondent).

Unit #2: "all employees of the respondent regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except Managers, persons above the rank of Manager." (11 employees in the unit).

Number of names of persons on revised voters' list		10
Number of persons who cast ballots	4	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	1	

(BARGAINING UNIT #1 - SEE APPLICATION UNITS CERTIFIED - NO VOTE CONDUCTED).

6780-74-R: Ontario Nurses' Association (Applicant) v. Extendicare Ltd. (Respondent).

Unit #2: "all registered and graduate nurses employed by the respondent in a nursing capacity for not more than twenty-four hours per week at its Medex Nursing Centre in Ottawa, Ontario, save and except nursing supervisor, persons above the rank of nursing supervisor and persons regularly employed for not more than twenty-four hours per week." (14 employees in the unit).

Number of names of persons on revised voters' list		11
Number of persons who cast ballots	9	
Number of ballots marked in favour of applicant	8	
Number of ballots marked against applicant	1	

Unit #6: "all registered and graduate nurses employed by the respondent in a nursing capacity for not more than twenty-four hours per week at its Medex Nursing Centre in Ottawa, Ontario, save and except nursing supervisor, persons above the rank of nursing supervisor and persons regularly employed for not more than twenty-four hours per week." (4 employees in the unit).



Number of names of persons on voters' list		5
Number of persons who cast ballots	4	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	0	

(BARGAINING UNIT #1 - SEE APPLICATION FOR CERTIFICATION DISMISSED - NO VOTE CONDUCTED).

(BARGAINING UNIT #3, #4 & #5 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

6781-74-R: Ontario Nurses' Association (Applicant) v. St. Joseph Hospital Sudbury (Respondent) v. The Civil Service Association of Ontario Inc. (Intervener).

Unit: "all lay registered and graduate nurses employed by the respondent engaged in a nursing capacity and regularly employed for not more than twenty-four hours per week, save and except head nurses, persons above the rank of head nurses, health nurse and those regularly employed for more than twenty-four hours per week." (42 employees in the unit).

Number of names of persons on revised voters' list		37
Number of persons who cast ballots	24	
Number of ballots marked in favour of applicant	23	
Number of ballots marked against applicant	1	

6799-74-R: Graphics Arts International Union, Local No. 28-B, Toronto (Applicant) v. NCR Canada Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent employed at 15 Marmac Drive and 60 Baywood Road, Rexdale, Ontario, save and except main office, salaried, sales and service employees, cafeteria staff, plant guards, part-time employees, foremen, supervisors and all employees who have power to discipline employees on behalf of the respondent." (127 employees in the unit).

Number of names of persons on revised voters' list		123
Number of persons who cast ballots	120	
Number of ballots marked in favour of applicant	89	
Number of ballots marked against applicant	31	

6906-74-R: Ontario Nurses' Association (Applicant) v. North York General Hospital (Respondent).

Unit: "all registered and graduate nurses employed in nursing care regularly employed by the respondent in the Borough of North York for not more than 24 hours per week, save and except unit administrators and persons above the rank of unit administrator." (176 employees in the unit).

Number of names of persons on revised voters' list		170
Number of persons who cast ballots	82	
Number of ballots marked in favour of applicant	73	
Number of ballots marked against applicant	9	

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING JANUARY

##### No Vote Conducted

4264-73-R: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Chemical Valley Inspection Services Limited (Respondent). (24 employees).

5026-73-R: Labourers' International Union of North America, Local 1059 (Applicant) v. P. & C. Excavating (Respondent). (4 employees).

6146-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. Two Star Carpentry Contractors Ltd. (Respondent). (21 employees).

6181-74-R: The Health Sciences Association of the Regional Municipality of Niagara Falls (Applicant) v. The Greater Niagara General Hospital (Respondent). (7 employees).

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6241-74-R: International Brotherhood of Painters & Allied Trades, Local Union 1891 (Applicant) v. G. Doerrsam & Sons Co. Ltd. (Respondent) v. Labourers' International Union of North America, Local 506 (Intervener #1) v. Operative Plasters' and Cement Masons' International Association of the United States and Canada, Local 48 (Intervener #2) v. Sprayed Fireproofing Association (Intervener #3). (4 employees).

6780-74-R: Ontario Nurses' Association (Applicant) v. Extendicare Ltd. (Respondent).

Unit #1: "all registered and graduate nurses employed by the respondent in a nursing capacity at its Medex Nursing Centre in Ottawa, Ontario, save and except nursing supervisor persons above the rank of nursing supervisor and persons regularly employed for not more than twenty-four hours per week." (3 employees in the unit).

(BARGAINING UNIT #2 - #6 - SEE APPLICATIONS CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

(BARGAINING UNIT #3, #4 & #5 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

6888-74-R: Construction and General Laborers' Tunnel and Rock Workers' Local Union No. 491 (Applicant) v. Pamo Inc. (Respondent). (13 employees).

6901-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Northern Wood Home Canadian Limited (Respondent) v. Group of Employees (Objectors). (9 employees).

6916-74-R: International Printing and Graphic Communications Union, Local 62 (Applicant) v. The Journal Publishing Company of Ottawa, Limited (Respondent). (5 employees).

6936-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Dominion Bridge Company Limited (Manitoba Division) (Respondent). (2 employees).

6977-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Temperature Specialties Manufacturers Limited (Respondent). (38 employees).

7019-74-R: Retail Clerks Union, Local 486 (Applicant) v. Ottawa Beef Company Limited (Respondent) v. Group of Employees (Objectors). (31 employees).

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7127-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Argus Installations Limited (Respondent). (2 employees).

7166-74-R: United Brotherhood of Carpenters and Joiners of America Local 2307 (Applicant) v. Simard Construction Materials (Respondent). (40 employees).



Certification Dismissed Subsequent to Pre-Hearing Vote

5916-74-R: The Hotel and Club Employee' Union, Local 299, Toronto of the Hotel and Restaurant Employees and Bartenders International Union (A.F.L.-C.I.O.-C.L.C.) (Applicant) v. Constellation Hotel Corporation Limited (Respondent).

Voting Constituency: "All employees of the respondent at the Constellation Hotel, Toronto, Ontario save and except Manager, Asst. Managers, Department Heads, Supervisors, Audit Department Staff, Office Staff, Front Office Clerks, Cashiers and Switchboard Operators, Banquet Staff Department, Security Personnel, Employees working less than 24 hours per week and students employed during the school vacation period." (311 employees).

Number of names of persons on revised voters' list		286
Number of persons who cast ballots	241	
Ballots segregated and not counted	5	
Number of spoiled ballots	4	
Number of ballots marked in favour of applicant	95	
Number of ballots marked against applicant	137	

6890-74-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Eplett's and Korman's Dairies Co. Ltd. (Respondent).

Voting Constituency: "All employees of the respondent at Timmins, save and except managers, persons above the rank of manager and office staff." (36 employees).

Number of names of persons on voters' list		36
Number of persons who cast ballots	36	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	33	

6970-74-R: Canadian Paperworkers Union (Applicant) v. Morgan Adhesives of Canada Limited (Respondent).

Voting Constituency: "All employees of the respondent at Brampton, save and except supervisors, persons above the rank of supervisor, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (123 employees).

Number of names of persons on revised voters' list		121
Number of persons who cast ballots	106	
Ballots segregated and not counted	2	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	32	
Number of ballots marked against applicant	71	

6993-74-R: Canadian Union of Operating Engineers (Applicant) v. North York General Hospital (Respondent) v. International Union of Operating Engineers Local 796 (Intervener).

Vote Constituency: "All stationary engineers and persons primarily engaged as their helpers employed by the respondent in the Borough of North York, Ontario, save and except Chief Engineer and persons above the rank of Chief Engineer." (11 employees).

Number of names of persons on voters' list		11
Number of persons who cast ballots	11	
Number of ballots marked in favour of applicant	5	
Number of ballots marked in favour of intervener	6	

7008-74-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Pounder Brothers General Contracting and Lumber Supply (Respondent).

Voting Constituency: "All employees of the respondent employed at and out of Stratford save and except foreman, persons above the rank of foreman office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (38 employees).

Number of names of persons on voters' list		26
Number of persons who cast ballots	25	
Number of ballots marked in favour of applicant	2	
Number of ballots marked against applicant	23	

Certification Dismissed Subsequent to Post-Hearing Vote

6122-74-R: Hotel and Restaurant Employees Union, Local 743 (Applicant) v. Ponderosa Steak House (A division of Foodex Systems Limited) (Respondent) v. Group of Employees (Objectors).

Unit #2: "all employees of the respondent at its Ouellette Avenue store in Windsor regularly employed for not more than 24 hours per week, save and except manager, assistant managers, and persons above the rank of assistant manager." (35 employees in the unit).

Number of names of persons on voters' list		37
Number of persons who cast ballots		36
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	1	
Number of ballots marked against applicant	34	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

6283-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Korlin Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Stratford, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (65 employees in the unit).

Number of names of persons on revised voters' list		61
Number of persons who cast ballots		57
Number of ballots marked in favour of applicant	26	
Number of ballots marked against applicant	31	

6429-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Faulkner Well Drilling Company Limited (Respondent).

Unit: "all employees of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).



Number of names of persons on voters' list		7
Number of persons who cast ballots	7	
Ballots segregated and not counted	2	
Number of ballots marked in favour of applicant	1	
Number of ballots marked against applicant	4	

6735-74-R: United Garment Workers of America (Applicant) v. H.D. Lee Company of Canada Limited (Respondent) v. Amalgamated Clothing Workers of America (Intervener).

Unit: "all employees of the respondent at North Bay, Ontario, save and except foremen, foreladies, instructing supervisors, persons above the rank of foreman, forelady and instructing supervisor, office staff and sales staff." (37 employees in the unit).

Number of names of persons on voters' list		51
Number of persons who cast ballots	41	
Number of ballots marked in favour of applicant	14	
Number of ballots marked in favour of intervener	27	
Number of ballots marked in favour of "No trade Union"	0	

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6847-74-R: Katherine Rose (Applicant) v. United Garment Workers of America Local 202 (Respondent) v. Hamilton Carhartt Manufacturing Limited (Intervener).

Unit: "all employees engaged in the cutting, operating, pressing, examining, folding and other manufacturing operations of garments in the factory of Hamilton Carhartt Manufacturing Limited at Toronto." (45 employees in the unit).

Number of names of persons on voters' list		44
Number of persons who cast ballots	39	
Number of spoiled ballots	1	
Number of ballots marked in favour of respondent	35	
Number of ballots marked against respondent	3	

6924-74-R: United Steelworkers of America (Applicant) v. Moore Dry Kiln Company of Canada Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Brampton, save and except foremen and persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (36 employees in the unit).

Number of names of persons on voters' list	34
Number of persons who cast ballots	34
Number of ballots marked in favour of applicant	12
Number of ballots marked against applicant	22

#### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY

6902-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Avena Investments Limited (Respondent). (3 employees).

6996-74-R: Metropolitan Toronto Association for School Psychological and Social Work Services Personnel (Applicant) v. The Scarborough Board of Education (Respondent). (25 employees).

7062-74-R: Labourers International Union of North America, Local 527 (Applicant) v. Center-Town Development (Respondent). (4 employees).

7064-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Henry's Excavating (Respondent). (4 employees).

7086-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. M.J. Finn Construction Ltd. (Respondent). (9 employees).

7108-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Fram Canada Limited (Respondent). (374 employees).

7136-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Faulkner Well Drilling Company, Limited (Respondent). (1 employee).

7156-74-R: Miss Wilma Weiberg, Miss Mary Triebner, Mrs. Lillian Tennant and Mrs. June Hodgins (Applicants) v. Service Employees' Union, Local 210 (Office Employees) (Respondent). (4 employees).

7158-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local 141 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. E & E Seegmiller Limited (Respondent). (7 employees).

7159-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local 141 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Galt Sand & Gravel Company Limited (Respondent). (7 employees).

7162-74-R: Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Loblaw's Groceries Co. Limited (Respondent). (8 employees).

7168-74-R: International Union United Plant Guard Workers of America, Local 1962 (Applicant) v. Steel Company of Canada, Limited, Fastener Shipping Centre (Respondent). (4 employees).

#### APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

##### DURING JANUARY

5225-73-R: Margaret Wark, on behalf of herself and other employees of Parker's Dye Works & Cleaners Limited, Toronto, carrying on business under the name of Parkers The "Spick & Span" Cleaners" (Applicant) v. Laundry, Dry Cleaning & Dye House Workers' International Union, Local 351 (Respondent) v. Parker's Dye Works & Cleaners Limited, Toronto (Intervener). (GRANTED).

Unit: "all employees of Parker's Dye Works & Cleaners Limited, at its plant and branches in Metropolitan Toronto and Brampton, save and except foremen or supervisors, persons above the rank of foreman or supervisor, office staff, drivers, students employed during the school vacation period and persons employed for not more than twenty (20) hours per week." (165 employees in the unit).

Number of names of persons on revised voters' list		112
Number of persons who cast ballots		108
Number of spoiled ballots	6	
Number of ballots marked in favour of respondent	17	
Number of ballots marked against respondent	85	



6344-74-R: Joseph Abbruscato (Applicant) v. Canadian Food and Allied Workers, Local Union 175 chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL, CIO, CLC (Respondent) v. Darrigo's Food Markets, Ontario Limited (Intervener). (DISMISSED).

Unit: "all employees of Darrigo's Food Markets Ontario Limited at its retail stores in Metropolitan Toronto regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (189 employees in the unit).

Number of names of persons on revised voters' list		136
Number of persons who cast ballots	139	
Ballots segregated and not counted	10	
Number of spoiled ballots	1	
Number of ballots marked in favour of respondent	78	
Number of ballots marked against respondent	50	

6812-74-R: Anna Skalnyj (Applicant) v. Service Employees Union, Local 204 A.F.L. - C.I.O. - C.L.C. (Respondent) v. Gibson Willoughby Limited (Intervener). (GRANTED).

Unit: "all employees of Gibson Willoughby Limited at 100 University Avenue in Metropolitan Toronto, save and except building superintendent, persons above the rank of building superintendent, office staff, and persons regularly employed for not more than 24 hours per week." (12 employees in the unit).

Number of names of persons on voters' list		10
Number of persons who cast ballots	10	
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	10	

6958-74-R: Krystine Theresa Lintteli (Applicant) v. Toronto Newspaper Guild, Local 87 of The Newspaper Guild (Respondent) v. CCH Canadian Limited (Intervener). (22 employees). (DISMISSED).

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#### APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

#### JANUARY

7017-74-R: United Steelworkers of America (Applicant) v. Toronto Cadmium Plating & Tinning Co. Ltd. (Respondent). (GRANTED).

7076-74-R: Ontario Nurses' Association (Applicant) v. The Corporation of the Borough of North York (Respondent). (GRANTED).

7077-74-R: Ontario Nurses' Association (Applicant) v. The Corporation of the Borough of Etobicoke (Respondent). (GRANTED).

7149-74-R: Ontario Nurses' Association (Applicant) v. The Board of Governors Hamilton Civic Hospitals (Respondent). (GRANTED).

7150-74-R: Ontario Nurses' Association (Applicant) v. Board of Health Oxford Health Unit (Respondent). (GRANTED).

7152-74-R: Ontario Nurses' Association (Applicant) v. The Queensway General Hospital Association (Respondent). (GRANTED).

7154-74-R: Ontario Nurses' Association (Applicant) v. The St. Catharines General Hospital (Respondent). (GRANTED).

#### APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

##### JANUARY

6793-74-U: Witmer-Lazenby Ltd. (Applicant) v. William Collier, and International Brotherhood of Electrical Workers, Local 804 (Respondent). (WITHDRAWN).

6795-74-U: Crane Canada Limited, Ontario Pottery Plant, (Trenton) (Applicant) v. John Campbell and C. MacDonald (Respondents). (WITHDRAWN).

#### APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JANUARY

6766-74-U: Crane Canada Limited, Ontario Pottery Plant, (Trenton, Ontario) (Applicant) v. William Cole, et al (certain Employees of the Applicant) (Respondents). (WITHDRAWN).

6767-74-U: Crane Canada Limited Ontario Pottery Plant (Trenton) (Applicant) v. Ronald Philips, and International Molders and Allied Workers Union, Local No. 3 (Respondents). (WITHDRAWN).

6768-74-U: Crane Canada Limited, Ontario Pottery Plant, (Trenton Ontario) (Applicant) v. Ronald Philips, et al (certain Employees of the Applicant) (Respondents). (WITHDRAWN).

6794-74-U: Crane Canada Limited, Ontario Pottery Plant, (Trenton) (Applicant) v. John Campbell and C. MacDonald (Respondents). (WITHDRAWN).

6946-74-U: Local 159, International Chemical Workers' Union (Applicant) v. Kodak Canada Ltd., Bruce Fraser and John Scott (Respondents). (WITHDRAWN).

6947-74-U: Local 159, International Chemical Workers' Union (Applicant) v. Kodak Canada Ltd., R. L. Christie, Jack A. Burgess, John Hill, Douglas Meikle, August Bolde, John Bentham, Jon L. Creighton, and Ronald Morrison (Respondents). (WITHDRAWN).

6964-74-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Fruehauf Trailer Company of Canada Limited (Respondent). (DISMISSED).

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7053-74-U: The Civil Service Association of Ontario (Inc.) (Applicant) v. Fleuty Funeral Home Ltd. operating Fleuty Ambulance Service (Respondent). (WITHDRAWN).

7104-74-U: The Canadian Union of Public Employees and its Local #1795 (Applicant) v. The Kirkland Lake Board of Education (Respondent). (WITHDRAWN).

#### COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

##### JANUARY

5062-73-U: Retail Clerks International Association (Complainant) v. G. Tambllyn Limited Sayvette Family Department Store Ltd. (Respondent). (WITHDRAWN).

6105-74-U: Nikos Kotinopoulos (Complainant) v. The Becker Milk Company Limited (Respondent). (DISMISSED).

6113-74-U: Lumber and Sawmill Workers' Union, Local 2995 of the United Brotherhood of Carpenters and Joiners of America (Complainant) v. Elk Lake Planing Mill Limited (Respondent). (GRANTED).

6614-74-U: Canadian Union of Public Employees (Complainant) v. Cochrane Nursing Home Limited (Respondent). (WITHDRAWN).

6823-74-U: The Canadian Workers Union (Complainant) v. The Burlington Golf and Country Club Ltd. (Respondent).

- and -

6824-74-U: The Canadian Workers Union (Complainant) v. The Burlington Golf and Country Club Ltd. (Respondent).

- and -



6825-74-U: The Canadian Workers Union (Complainant) v. The Burlington Golf and Country Club Ltd. (Respondent).

- and -

6826-74-U: The Canadian Workers Union (Complainant) v. The Burlington Golf and Country Club Ltd. (Respondent).

- and -

6827-74-U: The Canadian Workers Union (Complainant) v. The Burlington Golf and Country Club Ltd. (Respondent). (DISMISSED).

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6853-74-U: Hotels, Clubs, Restaurants and Taverns Employees' Union Local 261 (Complainant) v. Crawley & McCracken Co. Ltd. (Respondent). (DISMISSED).

6868-74-U: Retail Clerks International Association (Complainant) v. Little Bros. (Weston) Limited (Respondent). (GRANTED).

6963-74-U: Wilfred Peel (Complainant) v. The Ontario Public Service Staff Union (Respondent). (WITHDRAWN).

7024-74-U: Mr. Keith Browning (Complainant) v. Sheet Metal Workers Association Local #286 H. J. Heinz Co. - Can Division (Respondents). (DISMISSED).

7026-74-U: Northern Electric London Professional Association (Complainant) v. Northern Electric Company Limited (Respondent). (WITHDRAWN).

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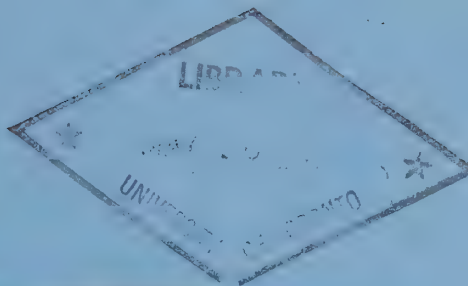
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# *Monthly Report*

ONTARIO LABOUR RELATIONS BOARD





ONTARIO LABOUR RELATIONS BOARD REPORTS

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Ontario Labour Relations Board

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3. In the facts at hand, where paragraph 24 of the decision points out that "there is no evidence that [the grievor] has engaged in a reasonable search for alternative employment", it should be noted that, in response to questions from both his counsel and counsel for the respondent, the grievor admitted that he had not looked for another job except as noted in the paragraph. Thus in regard to mitigation we had evidence before us to make the finding that the grievor had failed to mitigate his losses. The question of onus, in this sense therefore, did not arise.

7035-74-R: Ross Scolaro (Applicant) v. Canadian Food and Allied Workers, and Local Unions 175 and 633, chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, CLC (Respondent) v. DARRIGO'S SUPERMARKETS LIMITED (Intervener).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members O. Hodges and F. W. Murray.

APPEARANCES AT THE HEARING: J. C. Argier and R. Scolaro for the applicant; H. F. Caley and J. Dinardo for the respondent; R. C. Filion and J. Darrigo for the intervener.

DECISION OF THE BOARD: February 5, 1975.

1. The applicant has applied to the Board under section 52 of The Labour Relations Act for a declaration that the respondent did not, at the time a collective agreement was entered into, represent the employees in the bargaining unit for which it purports to be the bargaining agent.

2. In support of his application, the applicant filed written documents, referred to as petitions, signed by employees of the intervener. The Board does not consider the petitions to be relevant in the circumstances. There was also an allegation made that the petitions had been inspired and encouraged by the intervener. The Board finds that the evidence does not support the allegation.

3. Section 52 provides as follows:

52.-(1) Where an employer and a trade union that has not been certified as the bargaining agent for a bargaining unit of employees of the employer enter into a collective agreement, or a recognition agreement as provided for in subsection 3 of section 15, the Board may, upon the application of any employee in the bargaining unit or of a trade union representing any employee in the bargaining unit, during the first year of the



period of time that the first collective agreement between them is in operation, or, if no collective agreement has been entered into, within one year from the signing of such recognition agreement, declare that the trade union was not, at the time the agreement was entered into, entitled to represent the employees in the bargaining unit.

(2) Before disposing of an application under subsection 1, the Board may make such inquiry, require the production of such evidence and the doing of such things, or hold such representation votes, as it considers appropriate.

(3) On an application under subsection 1, the onus of establishing that the trade union was entitled to represent the employees in the bargaining unit at the time the agreement was entered into rests on the parties to the agreement.

(4) Upon the Board making a declaration under subsection 1, the trade union forthwith ceases to represent the employees in the defined bargaining unit in the recognition agreement or collective agreement and any collective agreement in operation between the trade union and the employer ceases to operate forthwith in respect of the employees affected by the application.

4. It is common ground that a collective agreement dated May 15, 1974 was made between the respondent and the intervener.

5. Under the terms of the collective agreement, the intervener recognizes Canadian Food and Allied Workers, Local Union 175 as bargaining agent for all employees in its retail stores in the Province of Ontario, with exceptions not here relevant. The intervener also recognizes Canadian Food and Allied Workers, Local Union 633 as bargaining agent for all meat department employees of the employer in its retail stores in the Province of Ontario, with exceptions not here relevant. The collective agreement, therefore, recognizes two distinct bargaining units.

6. It is not disputed that the respondent has not been certified

by the Board as bargaining agent for a bargaining unit of employees of the intervener. In light of the provisions of subsection (3) set out above, the onus of establishing that the respondent was entitled to represent the employees concerned rests upon the respondent and the intervener.

7. Section 52(1) provides that the Board may make a declaration "upon the application of any employee in the bargaining unit". On the evidence before the Board, the applicant in the present case was not a member of the bargaining unit covered by Local Union 633 and, for that reason, is not competent to bring the application with respect to that bargaining unit. The application, insofar as it concerns the Local Union 633 unit, is accordingly dismissed. The Board accordingly proceeds to deal with the application insofar as it affects the bargaining unit covered by Local Union 175.

8. The only question to be determined under section 52 is whether or not the respondent union was entitled to represent the employees concerned at the time the collective agreement was entered into. In order to satisfy the onus set forth in section 52, the parties to the agreement must establish that the trade union was entitled to represent a simple majority of the employees in the bargaining unit at the time the agreement was entered into (National Plastering Company Limited, OLRB M.R. December 1967, p. 876).

9. The evidence is that in the latter part of October 1972, the respondent commenced to organize employees of the intervener. The initial attempt was directed towards organization of meat department employees who would be covered by Local 633 of the respondent union. The campaign was conducted at three of the intervener's stores located, respectively, on Eglinton Avenue West, Yonge Street and Christie Street in Toronto.

10. During the course of this organizational campaign, the respondent also commenced a successor rights application under section 55 of the Act with respect to employees in a store operated by the intervener on Danforth Avenue. This store had formerly been operated by Busy B Discount Foods Limited. The respondent had represented employees of Busy B in a unit of employees in the meat department falling within the jurisdiction of its Local 633, together with two units, full-time and part-time, of employees falling within the jurisdiction of Local 175 while the store was operated as a Busy B store. The section 55 application, which alleged a sale between Busy B and the intervener, was subsequently withdrawn by leave of the Board. This was after the respondent, its locals and the intervener had voluntarily entered into the collective agreement. As the result of the withdrawal, no formal determination as to whether a sale of a business had taken place under section 55 has been made, and, consequently, no decision has been issued by the Board regarding the successor representation rights of the respondent in respect to the employees at that store under the provisions of the section.

11. Not only is that the case, but at the time at which the section 55 application was launched, in January of 1973, there were no employees in the Danforth store who had previously been employed in the bargaining units which had been represented by the respondent during Busy B's operation of the store. The employees, at the time the application under section 55 was made, were all persons hired by the intervener when it commenced to operate the Danforth store. There was no evidence of any nature produced during the hearing of the present application upon which the respondent relied to substantiate a claim that it was entitled to represent these employees, on grounds other than through the anticipated results of the section 55 application.

12. On May 25, 1973, an application for certification was made by the Canadian Food and Allied Workers, Local 633 for a bargaining unit comprising all meat department employees in the intervener's stores in Metropolitan Toronto. The application came on for hearing before the Board, and an Examiner was appointed on June 20, 1973, because of a dispute as to the lists filed by the company.

13. The evidence is that a number of discussions were held between the Examiner and the parties to the application and that such talks also included the matter of the section 55 application. As one result of the meetings before the Examiner, the list in the certification application was settled.

14. During the course of the discussions arising out of the meetings with the Examiner, the question of the union's representation rights with respect to other employees of the intervener who would comprise a bargaining unit covered by Local 175 also arose. The union was, at that very time, endeavouring to organize the employees who would form that unit and advised the company that it had some cards signed by these employees.

15. At the time the collective agreement was signed, the respondent held thirteen cards signed by employees in the proposed Local 175 unit which, at that time, comprised thirty employees. The evidence is that the respondent advised the intervener that it had "some" cards relating to the Local 175 unit. The respondent's organizational drive with respect to Local 175 had been concentrated on the three stores other than the Danforth store. With respect to the latter, reliance was placed on the understanding that a favourable outcome was virtually assured under the section 55 application.

16. At the hearing, the intervener took the position that the application was a matter involving the respondent and the applicant and that it, consequently, was not concerned with the proceedings. That being its approach, the intervener, consequently, offered no evidence with respect to the representative capacity of the respondent at the time that the agreement was entered into. The intervener did,



however, urge most strenuously that the collective agreement had been entered into in good faith. We can only conclude from this, that as the result of the discussions which commenced before the Examiner in June of 1973, the company believed that the union was, in fact, entitled to represent the employees in the proposed bargaining unit, on the grounds not only of the statement made by the respondent with respect to the cards, but also of the probability of representation rights arising under the provisions of section 55.

17. As already noted, the question before the Board is whether the respondent, at the time the agreement was entered into, was entitled to represent the employees in the bargaining unit. It is quite clear, on the evidence adduced by the respondent, that, at the time the agreement was entered into, the only factual basis for a right to represent the employees consisted of thirteen cards in a bargaining unit of thirty. On the basis of that evidence, the respondent did not represent a simple majority of the employees at the material time. As already indicated, reliance appears to have been placed by both the respondent and the intervener on the probable outcome of the section 55 application. This application, as already noted, was withdrawn upon the signing of the collective agreement.

18. It might well be that, in certain circumstances, the Board would accept the agreement of the parties that a sale of a business within the meaning of section 55 had occurred. In the present case, however, section 52 imposes an onus on the agreeing parties to establish that there was entitlement to represent employees at the time the agreement was signed. The discharge of that onus requires, because of the very nature of the inquiry, evidence from which the Board can find that a sale took place quite apart from the mere conclusions of the interested parties. The Board is, of course, unaware of what evidence, other than the skeletal facts referred to above, may have been considered by the respondent and the intervener when they made their decision as to the probable outcome of the section 55 application. In view of the onus, the Board can no more accept the mutual conclusion of the parties with respect to the section 55 application, in the absence of the evidence on which it is based, than it can accept a bald assertion of the parties of entitlement on any other grounds to representation without evidence in support thereof. This is because testing the validity of the grounds for voluntary recognition goes to the very root of the challenge under section 52 made by the applicant employee.

19. In considering this application, the Board is aware that notwithstanding the fact that the onus relates to entitlement to represent employees at the time the agreement was entered into, section 52(2) permits the Board to hold such representation votes as it considers appropriate. In Essex Wire Corporation Limited, OLRB M.R. January

1966, p. 775, the Board directed a representation vote when it became known that the voluntary recognition occurred in the face of a planned build-up. There is, however, no subsequent event present in the instant application, which would refer back to the entitlement to represent at the time that recognition was granted, and upon which the taking of a vote might be warranted.

20. In the result, the Board finds that the respondent and the intervener have failed to meet the onus under section 52(3), and accordingly declares that the respondent trade union was not, at the time the agreement was entered into, entitled to represent the employees in the bargaining unit covered by the respondent and its Local Union 175. Accordingly, as provided by section 52(4), the respondent and Local Union 175 forthwith ceases to represent the employees in the bargaining unit covered by the respondent and its Local 175, and the collective agreement, insofar as it affects that bargaining unit, ceases to operate forthwith in respect to the employees in that bargaining unit.

6852-74-R: Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. HOSTESS FOOD PRODUCTS LIMITED (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES AT THE HEARING: M. Levinson, B. Blasima and V. Gentile for the applicant; C. G. Riggs and D. F. King for the respondent.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER J. D. BELL WITH BOARD MEMBER E. BOYER CONCURRING: February 7, 1975.

1. Pursuant to the decision of the Board dated September 28, 1974, the Board directed that a pre-hearing representation vote be conducted in this matter. This vote was held on December 6, 1974. Although the resultant vote report in this matter is dated December 6, 1974, it is clear that the said report was not completed at this time and was not released to the parties until December 10, 1974. The results of the said report disclose that of the 537 ballots cast (5 ballots were excluded by agreement of the parties), 266 ballots were marked in favour of the applicant and 266 ballots were marked against the applicant.

2. By letters dated December 16, 1974, and January 10, 1975, the applicant requests that, in the particular circumstances, the Board direct that the ballot box be re-opened in order to permit a re-examination of the relevant 532 ballots, on the basis that certain of these ballots may have been improperly marked and thus improperly counted.

3. The evidence as adduced establishes that prior to the commencement of the count on December 6, 1974, the parties had reached agreement with respect to the eligibility of certain persons who had cast segregated ballots during the course of the vote. In this regard the parties had specifically agreed that the ballots of Manuel Furtada and Brian MacKay would be counted. At the conclusion of the balloting the Returning Officer, Mr. Abes, in the presence of Vincent Gentile the applicant's agent at the count and Don King the respondent's agent at the count, then began the task of counting the ballots. On agreement of the parties, they were assisted in this endeavour by the scrutineers who began to unfold and classify the ballots. The ballots were then separated into two groups, viz. those ballots which were marked in favour of the applicant and those ballots which were marked against the applicant. These ballots, in turn, were further divided into packages of fifty and were handed by Mr. Abes firstly to Mr. Gentile and then to Mr. King, who both verified the count at this time by signing to this effect on the reverse side of the last "Yes" and "No" ballots inspected. Although Mr. Abes did not specifically state that in his opinion each of the ballots was valid, it is clear that he treated all 532 ballots as valid for purposes of the count.

4. The evidence as adduced from Mr. Gentile at the hearing of this matter on January 30, 1974, is to the effect that he did have an opportunity to examine the ballots during the taking of the count at which time he had occasion to observe some markings on certain of the ballots which took the form of "stars and little o's". He also observed certain markings on the "Yes" and "No" spaces of some of the ballots. He stated however that he did not specifically challenge these ballots at this time although he felt unsure as to their validity. In this regard, the only representation he had made to Mr. Abes up to this time occurred shortly after the commencement of the vote that morning, when Mr. Gentile indicated that he may be challenging the results of the vote because of alleged managerial interference.

5. The evidence further discloses that upon the completion and announcement of the count, the parties (who at this point had been on their feet for nearly 14 hours) agreed to the suggestion that the vote report be issued the following week. It is clear that at this point Mr. Gentile privately indicated to Mr. Abes that he would be challenging generally the resultant Returning Officer's report in this matter and that specifically, he would now be challenging the inclusion of the ballots of Manuel Furtada and Brian McKay upon which there had been prior agreement as set out in Paragraph #3 herein.

6. Mr. Gentile further complained that Mr. Abes, contrary to the Board's practice in these matters, had failed to set out the "ground rules" regarding the propriety of the ballots prior to the opening of the ballot box and that in any event he would have formally registered his objections on the resultant report of the Returning Officer had it been completed that evening.



7. Dealing firstly, with the question of "ground rules", we do not find that the Board, through its Returning Officer, has had an established practice of setting out to the parties immediately prior to the opening of a ballot box, all of the rules that will be utilized in assessing the validity of any particular ballot on the basis of specific markings appearing thereon. Indeed, we find that it would virtually constitute an impossible task for a Returning Officer to attempt to cover all of the possible situations. In this regard, we note that in any event, the parties had not requested that such a procedure be utilized. We further note that Mr. Gentile is an experienced International Representative who conceded that in the past he has participated in many representation vote as the union's representative during the taking of the count. We would find it difficult therefore to limit his task on these occasions (as suggested by Mr. Gentile in the instant case) to one of merely assisting in the recording and tabulation of the number of ballots and not voicing his objections or speculations concerning their validity at the relevant time, that is to say, prior to the announcement of the count. In our opinion, it makes no difference that he would have formally registered his complaint on the Returning Officer's report had it been issued immediately following the release of the count.

8. In his first submission to the Board, counsel for the applicant however takes the position that it is not necessary for the representative at the count to specifically challenge the ballots and that the applicant has the right, regardless of the Board's practice in this regard, to subsequently challenge a vote and ask for re-examination of the ballots cast on the basis of the Board's Rules of Procedure. In this connection, he drew our attention to the provisions of section 44(1) and 45 of the Board's Rules and in particular he referred us to the provisions of Section 45(2) which provide as follows:

"Subject to subsection 3, where a pre-hearing representation vote is taken,

- (a) a party; or
- (b) any employee or representative of a group of employees,

who desires to make representations in connection with the application or as to any matter relating to the representation vote or the accuracy of the report of the returning officer or the conclusions the Board should reach in view of the report, shall file a statement of desire as prescribed in Form 44 or 45, as the case may be, on or before the last day for the

posting of copies of the report and notices under subsection 3 of section 44."

9. In this regard, counsel for the applicant submits that regardless of what transpired during the course of the representation vote, the only legal manner in which objections to the vote can be made, are provided for in Rule 45(2) and that there is no specific provision requiring the representative at the count to challenge the ballots at the time of the vote. He argued that accordingly Mr. Gentile had acted properly in deferring to challenge the ballots pending receipt of legal advice concerning these matters and which culminated in the letters filed by counsel for the applicant dated December 16, 1974 and January 10, 1975. Counsel's second submission is to the effect that pursuant to the provisions of Section 7(3) of The Labour Relations Act, the Board is in no position to determine if "50% of the ballots cast are cast in favour of the trade union", in the light of Mr. Gentile's testimony concerning the markings on certain of the ballots which could render them "spoiled". [See the recent majority decision of the Board in the Arrow Timber Lumber Company Limited Case [1973] OLRB M.R. 61, which was upheld by the Ontario Divisional Court at 36 D.L.R (3d) 513, wherein the Board found that a spoiled ballot was not to be considered as a "ballot cast".] In this connection, counsel further argued that the Returning Officer failed to properly instruct the parties pursuant to the provisions of Section 43(h) of the Board's Rules which permits the Registrar (and hence, the Returning Officer as his agent) to:

"give any directions he deems necessary for the disposition of improperly marked ballots and of ballots of persons whose eligibility to vote has been challenged by a party or is in doubt and generally for the proper conduct of the vote;"

10. One of the objections raised before the Board in the Arrow Timber Company Limited Case (supra) was with respect to the validity of a ballot upon the back portion of which the representatives at the count affixed their signatures following a statement to the effect that they had agreed to treat the ballot in question as a spoiled ballot. When the applicant subsequently questioned the propriety of this ballot, the Board, at page 62, stated as follows:

"...the Board is not prepared in these circumstances to permit the applicant to unilaterally repudiate its agreement with respect to the disposition of this ballot. To do so, in our opinion, would have the effect of making proceedings before this Board interminable and inconclusive, and not conducive to the best interests

of Labour Relations. (In this regard, see The University of Windsor Case [1971] OLRB Rep., p. 344; The Belcourt Construction (Ottawa) case OLRB M.R. December 1970, p. 944; Continental Can Company of Canada Limited Case [1971] OLRB Rep., p. 269). Accordingly, it will not be necessary in these circumstances, for the Board to make a ruling concerning the propriety of the markings as appears on the face of this ballot."

11. Having carefully reviewed the totality of the evidence, we find that the principles as set out above are equally applicable to the circumstances in the instant case. In our opinion, the actions both of the Returning Officer and the representatives at the count, immediately prior to the count were clear and unequivocal with respect to the validity of the ballots. These actions, we find, were further corroborated by the signatures of the respective representatives at the count in the manner as set out in Paragraph #3. It therefore becomes abundantly clear that Mr. Gentile began to experience second thoughts in this matter only after he had been made aware of the count at which time he not only indicated that he would be challenging the ballots generally and that he would be seeking legal advice in this respect, but more particularly, he expressed the view to Mr. Abes that he would now be challenging the ballots of Furtada and MacKay despite the fact that the parties had initially reached specific agreement concerning the eligibility of these employees to participate in the vote.

12. Having carefully reviewed the Board's Rules of Procedure and in particular Rule 45(2), we find that these provisions do not provide for a general right of the parties to a re-examination of the ballots following the disclosure of the count during the course of the vote proceedings. To do so in the particular circumstances of this case, would in our opinion, have the effect of transforming these proceedings into a "fishing expedition". As regards Rule 43(h), we further find no improprieties in the conduct of Mr. Abes in these circumstances. In the result, we are accordingly satisfied that, but for the remaining charges as filed by the applicant by letter dated January 10, 1975, with respect to the alleged unlawful interference by the respondent with the formation of the applicant, the Board would now be in a position to make a determination pursuant to the provisions of section 7(3) of the Act.

13. The matter is therefore set down for continuation of hearing on February 20, 1975, for the purpose of entertaining the evidence and representations of the parties with respect to the said remaining charges as filed by the applicant.



14. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER E. BOYER: February 7, 1975.

Although I do not necessarily accept the reasoning as set out in the majority decision, having regard to the special circumstances of this case and taking into account the evidence and representations of the parties, I concur with the conclusions as reached by the majority herein.

6653-74-R: Stratford Typographical Union Local 139, International Typographical Union (Applicant) v. THE BEACON HERALD OF STRATFORD LIMITED (Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Robert Earles and Richard Brennan for the applicant; R.J. Drmaj, S.H. Dingman and C.W. Dingman for the respondent.

DECISION OF GEORGE W. ADAMS, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: February 11, 1975.

1. This is an application for certification.

. . .

6. The applicant seeks to represent a bargaining unit consisting of "all employees of The Beacon Herald of Stratford Limited employed more than 24 hours per week and engaged in News - Editorial and Photography Departments, save and except Managing Editor, Co-Publishers and Confidential Secretary to the Co-Publishers and Managing Editor." The respondent submits that City Editor and the Sports Editor should be excluded from the unit having regard to the wording of section 1(3)(b) of the Act. The respondent further submits that the bargaining unit description should specifically exclude "students employed during the school vacation and students enrolled in journalism courses at a university or community." The parties agree that the Chief Photographer is not to be excluded from any bargaining unit found to be appropriate. The Board therefore appointed an Examiner to inquire into the duties and responsibilities of the City Editor and Sports Editor and to inquire into the employment relationship of students involved in journalism courses at a university or community college.

7. The report of Examiner J.A. MacDonald is dated January 3, 1975 and the parties by letters to the Board dated January 13, 1975 and January 19, 1975, submitted representations as to the conclusions the

Board should reach in view of the report. Neither party requested a hearing to elaborate these views.

8. The respondent is engaged in the publication of a newspaper. An organization chart of its operations has two Co-Publishers at the top (alternatively designated as Editor and General Manager). The Managing Editor, Mr. John Weichel reports to them and the City Editor, the District Editor, the Wire Editor, and the Sports Editor reports to the Managing Editor. The Chief Photographer would appear to be organizationally linked to both the Managing Editor and City Editor.

9. The City Editor, Mr. David Ellis, described his duties and responsibilities in the following terms:

To direct reporters in the coverage of city news and to edit the copy and lay out pages.

The Managing Editor described his duties in this way:

Let me start at the beginning, with his duties in the newsroom. He basically edits copy from the reporters, he assigns them to their stories. He is responsible for page layout. He has five reporters "under [his] direct supervision" and is responsible for the assignment of their work.

He is also said to be responsible for the quality of their work and the Examiner's Report confirms a very close supervisory and collegial relationship between the City Editor and his reporters - particularly because he edits their work for publication. It would appear that this supervisory position leads him to take corrective steps when a reporter's work is defective. These corrective steps are in the form of constructive criticism however and are not viewed as discipline. But where such criticism is ignored the Managing Editor is apprised because he and the City Editor meet daily. And in the one case where an errant reporter continued to make mistakes the City Editor recommended his termination and the Managing Editor terminated him.

10. Describing the City Editor's general role in such matters the Managing Editor stated:

"...I think we've had several actual dismissals, and we've talked about other people who we thought should be dismissed, but, quit on their own, and I have no idea why they quite. I imagine they realized on their own that they weren't working out."

Thus it would appear that the City Editor has an ongoing role in the personnel decisions made by the Managing Editor.

11. The City Editor participates in pre-selection interviews of persons seeking employment with the respondent. These interviews are conducted by the Managing Editor who makes the final decision but the City Editor is brought in and his opinion is sought. Moreover the City Editor believes the Managing Editor acts on his opinions and the Managing Editor indicated that "[he] had never hired anybody that he didn't approve of".

12. But what makes it difficult for this Board to conclude that the City Editor exercises managerial functions is his limited authority in dealing with employees day to day and his limited policy-making role. Furthermore his status is particularly ambiguous when regard is had to the general consultative nature of decision-making in this kind of "white-collar" context. In other words, the Managing Editor's pre-hiring and personnel consultations with the City Editor provide him with information to make a decision and because it is the City Editor who must work with these people his opinion is important information. But it is difficult to characterize the City Editor's function in this regard as the exercise of independent judgment or decision-making when his limited authority in other areas of managerial concern is considered. For example, he has little or no authority to grant time off. He does not attend management meetings. These meetings are attended by department heads only. The City Editor plays no role in budget formulation and cannot authorize the purchase of material or supplies. He assists the Managing Editor in his policy-making role but it is clearly an assisting role that he performs. Moreover, while the City Editor assigns the reporters the stories and does very little reporting himself, the assignment of duties is a coordinating function, the rest of his time is spend in editing their copy and in page lay out - activity which can easily be characterized as bargaining unit work. In other words the evidence does not suggest that this activity has an intrinsic managerial nature. Because of these latter duties and limited authorities of the City Editor we are not prepared to find that he exercises managerial functions. But we cannot ignore his regular and material involvment with the Managing Editor in the confidential personnel matters discussed above, and thus we are of the opinion that he is employed in a confidential capacity in matters relating to labour relations.

13. The Sports Editor spends much more of his time at actual reporting, having only one full-time employee ("his assistant") and one part-time employee under his direction. He is responsible for the assignment of work but this is done in consultation with the people involved and has no impact on their individual salaries. Furthermore he has never been asked for an evaluation of the performance of the employees he works with and he does not believe he has the authority to recommend that an employee be discharged or disciplined.



14. It was established that the Sports Editor spoke to the Managing Editor about the performance of one employee - because "the department was suffering". When the employee's performance did not improve the Managing Editor decided to "let him go" and the Sports Editor volunteered to relay this information. The Sports Editor did not make the decision and it would not appear that he made any recommendations in this regard.

15. It would appear that the Sports Editor wrote two notes to an employee (possible the above mentioned person) highlighting certain deficiencies in his performance. But one was written at the suggestion of the Office Manager and the other arose out of a direction by the Managing Editor that the Sports Editor "make it clear [to the employee] what [the deficiencies] were". In other words, his actions appear as ad hoc response orchestrated by others to a obvious personnel problem. We therefore find that these particular documents do not reflect the man's actual duties and responsibilities.

16. The Sports Editor has participated in about five pre-hiring interviews but the importance of his opinion is not established. Moreover as a general matter the evidence does not establish that the Sports Editor has the same working relationship with the Managing Editor in regard to personnel matters as does the City Editor.

17. The Sports Editor does not attend management meetings; he does not have any input into the budget decisions of the respondent; he cannot grant time off; he does not fill out daily attendance sheets; and he cannot purchase any item on the respondent's behalf.

18. Thus, having regard to all of the evidence in regard to the Sports Editor's duties and responsibilities, we cannot find that he exercises managerial functions or that he is employed in a confidential capacity in matters relating to labour relations.

19. The issue relating to students can be broken into two categories as reflected in the following statement of the Managing Editor:

"Let me divide it into the 3 groups that exist: From Conistoga College, we were asked to take students for a week-period at a time. We extended that to 2 weeks because we didn't think they'd get enough training in a week; We have taken one student from Western in the spring during their Spring break; and we have employed a summer student for a number of years."

20. The students from Conistoga College and the University of

Weston Ontario are there at the request of those institutions. The respondent has agreed to take a number of students from Conistoga College into its operation for two-week periods and to pay for their room and board. Similarly it has agreed to take one Western student for "the spring break". The room and board is paid directly to the landlord in accord with the respondent's agreement with the educational institutions. The respondent does not pay these students a salary because they perform no specific duties. They are there at the behest of a school to experience the publication of a newspaper. Presumably it is hoped that this will heighten their sensitivity to the real world and thereby more effectively accomplish the educational goals of the institutions from where they come. This is the principal purpose of their presence. The programme may also constitute a recruiting tool for the respondent in regard to future employees.

21. Accordingly we must conclude that these people are not employees of the respondent. They are in effect student observers and because of their non-employee status there is no need to specifically exclude them from the bargaining unit. The Labour Relations Act does not apply to them.

22. But this is not the case for the student employed during the summer vacation. At the request of either party, the Board follows the practice of excluding students employed during the vacation period from a regular plant or office unit when such persons are employed at the date of the application or where there has been a practice of employing them which the employer intends to continue; (Post Printing Co. Ltd. [1966] OLRB Rep. March 930; Royal Arc Ltd. [1967] OLRB Rep. April 64; Custom Glass Ltd. [1970] OLRB Rep. January 1,204). The only exception to this practice is where their exclusion would deprive them of collective bargaining - for instance where only one such employee occupies this category. In such a situation, if that employee desires to be represented by the applicant union, the Board departs from its regular practice of finding a separate bargaining unit for employees so classified and they are included in the unit applied for; (see Brinks Express Company of Canada Limited [1970] OLRB Rep. July 502; and Essex County Humane Society [1969] OLRB Rep. June 391).

23. Applying these principles to the facts at hand, the respondent does have a history of employing one student during the summer vacation period. But because the identity of this person is unknown at this time the Board is unable to apply the above mentioned exception. Thus this category of student is to be excluded.

24. In summary we find that all employees of the respondent engaged in News - Editorial and Photograph Departments, save and except Managing Editor, City Editor, Co-Publishers, Confidential Secretary to the Co-Publishers, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week, constitute a unit of employees of the respondent appropriate for collective agreement.

26. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: February 11, 1975.

1. Having regard to the Report of the Examiner and the written representations of the parties, I would make the following finding:-

- i. The applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.
- ii. The City Editor, David Ellis, exercises managerial functions and is employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(b) of The Labour Relations Act.
- iii. The Sports Editor does not exercise managerial functions nor is he employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(b) of The Labour Relations Act.
- iv. The Students from Conistoga College and the University of Western Ontario are not employees of the respondent and accordingly are not included in the bargaining unit sought by the applicant.
- v. In accordance with the request of the respondent, students employed during the school vacation period should be excluded from the bargaining unit. Such exclusion follows the usual Board practice in this regard.

2. In summary I would find that all employees of the respondent engaged in News - Editorial and Photography Departments, save and except Managing Editor, City Editor, Co-Publishers, Confidential Secretary to the Co-Publishers, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. I am satisfied on the basis of all the evidence before me that more than sixty-five per cent of the employees of the respondent in the



bargaining unit at the time the application was made, were members of the applicant on October 30, 1974, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

4. I would find that a certificate should issue to the applicant.

7019-74-R: Retail Clerks Union, Local 486 (Applicant) v. OTTAWA BEEF COMPANY LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and O. Hodges.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER J.D. BELL: February 12, 1975.

1. By letter dated January 29, 1975, counsel for the applicant requests that the Board reconsider its decision in this matter dated January 17, 1975, wherein the Board dismissed this application for certification on the basis that it was not prepared to accept the membership cards upon which Guy Gauthier, an experienced union official, is shown as collector. This conclusion was reached by the Board in view of the uncontradicted testimony of Jean Paul Pacquette to the effect that he was advised by the said Gauthier at the time of signing a membership card and paying a dollar that if the union was unsuccessful in its application then the dollar would be returned to him.

2. Upon setting out the background to the proceedings, Counsel for the applicant commencing at page 2 of the said letter states as follows:

"The Registrar of the Board, by notice dated January 2, 1975, fixed a date January 14, 1975 for continuation of the hearing. The purpose of the hearing was explicitly said to be to entertain "the evidence and representations of the parties with respect to the charges outlined by the Respondent in his reply to the application dated December 20, 1974."

At the hearing on January 14, 1975, the Board heard extensive evidence relating to the charges. In the course of the evidence and unresponsive to any direct questions put, one Pacquette made the statement referred to by the Board in paragraph 2 of its decision dated January 17, 1975. The statement was clearly

not relevant to any issue then before the Board, and neither members of the Board, Counsel for the Respondent nor Counsel for the Applicant examined as to the statement the witness had made. At no time did Counsel for the Respondent make application to amend his charges.

Counsel for the Respondent then argued at length and made no reference to the statement that Pacquette had made. Counsel for the Applicant argued and made no reference to the statement that Pacquette had made. It clearly did not relate in any way to the charges which were then before the Board for disposition. At the conclusion of Counsels' argument Mr. Bell of the Board asked for the Applicant's "position" with respect to the statement of Pacquette. Counsel for the Applicant advised Mr. Bell that if the Board regarded the statement as one of consequence, he assumed that the Board would either conduct its own inquiry in the usual way and if merited direct a hearing, or would list the matter for hearing with respect to that issue.

It is respectfully submitted that the Board has unfairly dealt with the rights of the Applicant in this case. The application was supported by membership evidence, which at least on its face is satisfactory and in compliance with the rules of the Board. In addition, the application is supported by a Declaration in form 8 made by Mr. Baily, an experienced and responsible officer of the Applicant.

It is, therefore, the request of the Applicant that the Board should review the Decision herein, set it aside and either conduct its own inquiries in the usual way, or alternatively conduct a hearing into the nonpay membership issue." (Underlining added)

3. The Board takes issue with the underlined statements. A review of our notes in this regard discloses that counsel for the respondent did, in his argument, refer to the fact that no evidence was adduced by the applicant to rebut Pacquette's testimony and that more particularly,

in alluding to the fact that Gauthier was not called by the applicant, counsel for the respondent did specifically refer to Pacquette's testimony concerning Gauthier's statement that the dollar would be returned if the union did not "get in". As regards the second underlined phrase, it is our recollection that when Mr. Bell put his question to Counsel for the applicant, the latter indicated to the Board that he had no representations to make on the point in that the matter was now in the Board's hands and that he would assume that the Board would follow its usual practice in these matters. At no time during the course of these proceedings did counsel for the applicant indicate that he was taken by surprise nor did he request an adjournment in order to meet Pacquette's testimony in this regard.

4. In our opinion, we find these circumstances somewhat analogous to those which transpired in The Stanley Steel Company Limited case [1972] OLRB Rep. 181, where the Board upon hearing the evidence, dismissed the application on the basis of certain improprieties in the execution of the "Form 8" document tendered in those proceedings, despite the specific wording in the notice of hearing in that matter which merely provided for an inquiry into an allegation that one of the persons claimed by the applicant as a member had not paid any money on his own behalf on account of initiation fees. The position of the Board in this respect was sustained by Mr. Justice Grant in Weekly Court. (See Canadian Union of Operating Engineers v The Stanley Steel Co. Ltd. 72 CLLC ¶14,135 at page 549. On April 5, 1973, an appeal from Mr. Justice Grant's order was heard and dismissed by the Ontario Court of Appeal before their Lordships Evans, Brooke and Estey).

5. In these circumstances, therefore the applicant's request for reconsideration is accordingly denied.

DECISION OF BOARD MEMBER OLIVER HODGES: February 12, 1975.

The evidence of union official Guy Gauthier is crucial in this determination and, in view of the request for reconsideration, it is my decision that the applicant must be given the opportunity to appear before the Board with Guy Gauthier to tell Gauthier's side of the story.

7072-74-M: United Cement, Lime and Gypsum Workers' International Union, Local 306 (Applicant) v. INDUSMIN LIMITED (Respondent) v. OPS Transport Ltd. (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and L. Hemsworth.

APPEARANCES AT THE HEARING: G. Farquharson, Q.C., for the applicant; N. Rogers, Q.C., and C. Kurtz for the respondent; no one appearing for the intervener.



## DECISION OF THE BOARD:

February 13, 1975.

1. This is an application under section 95(2) of the Act with respect to the employment status of certain named persons engaged as truck drivers for purposes of hauling materials at and out of the respondent's quarry operations at Nephton, Ontario. There is no dispute that the disputed persons are employees for purposes of the Act. The question before the Board is the incidental issue of identifying the employer.

2. It appears on the fact of the record that since June 19, 1971, the respondent by agreement has engaged OPS Transport Limited to perform certain services whereby "the contractor agrees to haul the company's entire output of ore from its quarries to its mills and further to haul the company's waste rock from pits to dumps and to provide sufficient trucks acceptable to the company for such purpose."

3. There is no dispute that at all material times the applicant trade union was a party to a collective agreement with both the respondent and OPS Transport Limited. There is also no dispute that until December 1, 1974, the employees hired to perform the truck driving duties pursuant to the agreement between OPS Transport Limited and the respondent were covered by a collective agreement consummated with OPS Transport Limited. The relevant portions of that agreement read as follows:

ARTICLE 1 - SCOPE

1.01 This agreement is entered into on behalf of all employees of Ops Transport Limited who are employed as Truck Drivers at the Location of Indusmin Quarry operation at Nephton, Ontario.

1.02 "Employees" are defined for the purpose of this agreement as including all hourly-rated employees subject to the following exclusions:

- (a) Officers of the company
- (b) Management personnel
- (c) Supervisors, foremen, hourly-rated employees above the rank of working sub-foreman.
- (d) Office, laboratory and stores personnel
- (e) Janitors and watchmen
- (f) Employees who have had less than thirty (30) worked days of service with the company.

ARTICLE 2 - RECOGNITION

2.01 The company recognizes the union as the sole collective bargaining agency for the employees covered by this agreement with respect to rates of pay, hours of work and other matters herein referred to.

2.02 The company acknowledged that it is not its intention for supervisors to perform work normally done by the members of the bargaining unit. No person outside the bargaining unit as defined above shall perform work normally done by employees in the bargaining unit to the extent that such work shall displace an employee within the unit except for, the purpose of instruction, experimentation, making process adjustments or in an emergency which might endanger life or property. In addition the company agrees that no maintenance work required by the company operation will be contracted out except in an emergency or during major maintenance shutdown or occasional work requiring equipment or abilities not available at the plant and only then providing that this contracting out will not result in a lay-off of members in the bargaining unit.

Signed on behalf of the parties hereto by their duly authorized representatives this 18 day of Dec 1972.

For the Company: (2 signatures)

For the Union: (3 signatures)

Witness: (1 signature)

4. As a result of a decision to assume sole responsibility for its hauling operations, the respondent resolved not to renew its contractual agreement with Ops Transport. At that time the representatives for the applicant trade union and the representative for Ops Transport decided to hold in abeyance the negotiations that had been entered into with a view to modifying the terms of the collective agreement referred to in paragraph 3 herein and which had expired on October 11, 1974. On December 1, 1974, Ops Transport Limited notified "all employees" in accordance with its obligations under the terms of The Employment Standards Act (Ont.) that effective immediately their services were being terminated. On December 14, 1974, the applicant trade union filed the instant application alleging that the named persons were indeed employees of Indusmin Limited.

5. The Board notes that since Ops Transport Limited became the successor to the obligations of Frank S. Coyle Limited, its parent company, in performing hauling services for the respondent two collective agreements have been entered into with the applicant trade union as the exclusive bargaining agent of the employees engaged as truck drivers. The Board also finds that but for the respondent's decision to terminate its relationship with Ops Transport, the applicant would have continued its collective bargaining relationship with Ops Transport as the exclusive

bargaining agent for the employees whose status is presently disputed. The Labour Relations Act defines "collective agreement" as follows;

1.--(1) In this Act,

- (e) "collective agreement" means an agreement in writing between an employer or an employers' organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employers' organization, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers' organization, the trade union or the employees;

Furthermore, the Act provides;

35.--(1) Every collective agreement shall provide that the trade union that is a party thereto is recognized as the exclusive bargaining agent of the employees in the bargaining unit defined therein.

6. We are satisfied having regard to the documentary evidence before this Board and the relevant provisions of the Labour Relations Act that the employees subject to the instant dispute were employees, until their termination on December 1, 1974, of Ops Transport Limited. In other words, at all material times the evidence establishes that the employees are not employees of Indusmin Limited.

2845-72-R: TORONTO SHEET METAL AND AIR HANDLING GROUP (Applicant) v. Sheet Metal Workers' International Association, Local Union #30 (Respondent) v. Stainless Steel Equipment Manufacturers et al (Intervener #1) v. Residential Sheet Metal Contractors Organization (Intervener #2).

[Re: Barrie and Vicinity Collective Agreement]

BEFORE: D.E. Franks, Vice-Chairman, and Board Members E. Boyer and H.J.F. Ade.

APPEARANCES AT THE HEARING: W.S. Cook and R.B. Wilson for the applicant; Ronald S. Taylor and Ernest W. Ferguson for the respondent; Robin B. Cumine and Ted Morris for certain employers.

DECISION OF THE BOARD: February 14, 1975.



1. By its decision dated January 25th, 1974, this Board accredited the applicant employers association as bargaining agent for employers of Sheet Metal Workers and Sheet Metal Workers' Apprentices in an area as follows:

"Halton County with the exception of the west side of Oakville Creek in Trafalgar Township; Nelson and Nassawageya Townships; Peel County; Erin Township in Wellington County; Dufferin County; Simcoe County; Metropolitan Toronto; York County; County Ontario; the Townships of Cartwright and Darlington in Durham County; District of Muskoka and the Townships of Carling, Ferguson, McDougall, McKellar, Christie, Foly, Conger and Humphries in the District of Parry Sound in the Province of Ontario."

2. In paragraph 5 of that decision the Board noted that in addition to the collective agreement between the applicant and the respondent there were other collective agreements affecting the area applied for by the applicant. However, the Board did not deal specifically with the collective agreements referred to in that portion of its decision.

3. Subsequent to its decision dated January 25, 1974, the Board has received requests from certain employers in the Barrie area requesting either that the geographic area in the Board's previous decision be amended to exclude the area in the "Barrie" Collective Agreement or alternatively, request the Board to state that they are not covered by the order of January 25th, 1974, in this matter.

4. In support of this request for reconsideration, certain of the employers concerned filed with the Board a document in the form of a standard collective agreement covering the following geographic area:

"Simcoe County, District Muskoka, Townships of Rama, Mara and Thorah in the County of Ontario, and the Townships of Carling, Ferguson, McDougall, McKellar, Christie, Foley, Conger and Humphrey in the District of Parry Sound."

5. The style of cause of that standard area agreement is as follows:

"THE INDIVIDUAL SIGNATORY CONTRACTOR  
OF BARRIE & VICINITY, ONTARIO  
Party of the first part, hereinafter  
referred to as the "Company or Employer"

SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION  
 LOCAL UNION NO. 30-C, of BARRIE, ONTARIO  
 Party of the second part, hereinafter referred  
 to as the "Union" or "Employees".

Certain of the employers affected by that agreement take the position that "Local 30-C" of Barrie is a trade union different from the respondent in the present case. Alternatively, they take a view that if it is not a different trade union from Local 30, then the Board must find that it is not a trade union at all and therefore the document is not a collective agreement.

6. Both the applicant and the respondent take the position that "Local 30-C" is not a separate trade union from the respondent union. They view the document in question as simply setting out a different wage rate for the Barrie area which they admit should not be at the same level as the rest of the area affected by this accreditation order.

7. The evidence in the present case is quite clear. The employees affected by the collective agreement referred to are clearly members of the respondent trade union. Further there are no documents relating to a separate "Local 30-C" of the Sheet Metal Workers International Association.

8. On the basis of the evidence before the Board we are satisfied that "Local 30-C" is not a separate trade union but is part of Local 30. The document, therefore, is a collective agreement between certain individual employers and the respondent. In this regard the reference to Local 30-C was not a reference to a separate entity but rather a reference to the area which the agreement in question covered.

9. In view of the foregoing reasons, the Board therefore refuses to amend the geographic area in its previous decision accrediting the applicant association, and we are of the view that those employers affected by that application who were bound by the agreement referred to in this decision are bound by that accreditation order.

6448-74-U: Canadian Union of Public Employees (Complainant) v. THUNDER BAY DISTRICT HEALTH UNIT (Respondent).

BEFORE: D.E. Franks, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

DECISION OF THE BOARD: February 14, 1975.

1. This is a complaint made under section 79 of the Act wherein the complainant trade union alleges that the respondent health unit

discharged two employees, Allan Young and Greg Auld the grievors herein, contrary to the provisions of the Labour Relations Act. The grievor Auld was suspended on August 27, 1974, and permanently discharged on September 4th, 1974. Young was dismissed on September 3rd. These events were the culmination of some three to four months of turmoil in the respondent Health Unit and in order to deal with these discharge cases it will be necessary to recount some of the events that took place in the preceding months.

2. Both Mr. Young and Mr. Auld were public health inspectors for the respondent Health Unit. Some time in May as a result of discussions among certain of the public health inspectors the complainant trade union was approached to organize employees of the health unit. On May 13th, 1974, Mr. Young signed a membership card in C.U.P.E. and subsequently proceeded to organize (i.e. act as collector of the membership cards) a number of other health inspectors. In addition, attempts were made to organize the other staff in the Health Unit. It appears that no attempt was made to keep the organizing campaign secret. Indeed when an organizing meeting was held in the auditorium adjacent to the Health Unit premises it appears that next morning Mr. Daniels the Administrator of the Health Unit had discussions with Mr. Young concerning the use of the premises for organizing a trade union. Thus it is clear that the Administration of the respondent knew that there was an organizing campaign and further from the evidence it is clear that they knew that Mr. Young, Mr. Auld and Mr. Bowban were involved in organizing and supporting the trade union. The complainant trade union applied for certification in June 1974 and a certificate was issued by this Board dated July 15, 1974.

3. During those proceedings an issue arose concerning the category of senior health inspector. It appears that on July 1st, the respondent appointed a Mr. Allan Campbell as senior public health inspector. Although we are not concerned with that appointment in the present case, that fact appears to have triggered a series of events which formed the bulk of the evidence heard by the Board in this matter. It appears that three of the public health inspectors had applied for the job when the competition for this new position was announced. In addition to Mr. Campbell who had some three years experience as a public health inspector, there were also applications by Mr. Bowban who had some 14 years experience and Mr. Burger who had some 11 years experience as a public health inspector. It appears that Mr. Bowban was quite upset at the appointment of Mr. Campbell and he subsequently launched a campaign which included representations to the members of the Board of Health, the Mayor of Thunder Bay and local representatives of the Progressive Conservative Party. It also appears that a group of restaurant owners and businessmen in the area inspected by Mr. Bowban started a petition expressing discontent with the passing over of Mr. Bowban for the senior appointment.



4. Mr. Bowban also sought the support of the other public health inspectors and indeed a letter was sent to the Chairman of the Board of Health requesting an explanation of the appointment. This letter was signed by Mr. Bowban, Mr. Bunger and Mr. Auld. In addition to this letter Mr. Auld, Mr. Bunger and Mr. Young visited an Alderman Mrs. Grace Remus, who is also a member of the Board of Health. At this meeting they attempted to persuade her to bring the matter before the next meeting of the Board of Health. Apparently, it was eventually decided that Mr. Bowban should be allowed to attend a meeting of the Board of Health on Friday August 23rd, at which time his failure to obtain the appointment would be discussed with him.

5. Matters came to a head on Friday the 23rd. It appears that on the morning of Friday the 23rd two of the health inspectors, Mr. Bunger and Mr. Everson had an exchange which resulted in their suspension for two days. Further as a result of this disturbance Mr. Bowban declined to meet with the Board to Health on that day.

6. It appears that on the morning of Monday the 26th neither Mr. Young nor Mr. Auld reported for work. Mr. Auld's explanation is that he was not feeling well, that he was unable to perform his duties and so did not report for work. At this time, although Mr. Campbell was the senior health inspector in the department and although instructed to deal with Mr. Campbell, Mr. Auld telephoned this information in to Mr. Bowban in the office. When Mr. Auld reported for work on Tuesday the 27th, he was questioned about his illness and he admitted that in the afternoon at about 4 o'clock he had gone to a garage to get a part for his truck. He was at that point suspended and informed that his discharge would be recommended to the Board of Health.

7. Mr. Young was absent for the whole week August 26th to August 30th. His explanation was that he had aggravated a back injury on the weekend and was unable to work the whole of the week. This allegation was supported by a doctor's certificate. However, when he returned to work on Tuesday, September the 3rd, he was informed that he was discharged. It is however interesting to note that his claim for sick pay for the week in question was accepted by the Health Unit and he was reimbursed for that week.

8. The Board of Health was scheduled to meet on Wednesday, September 4th and both Mr. Bowban and Mr. Auld were invited to attend at that meeting. Prior to the meeting, Mr. Daniels the Administrator and Dr. Pickersgill, the Medical Officer of Health after discussions, decided upon a course of action which they presented in the form of a memo to the members of the Board of Health. The recommendations were that Mr. Young and Mr. Auld be discharged, that Mr. Bowban be given the option of resigning and if his resignation was not forthcoming then he would be discharged for professional misconduct in relation to the petition circulated by the

various store owners which he was inspecting. Mr. Bunger and Mr. Everson were to be given a warning, the two day suspension having been adequate discipline. In this regard it is interesting to note that Mr. Bunger did not appear at work for the remaining three days after his suspension in the last week of August. The action which the Board of Health took on these recommendations is interesting. The discharge of Mr. Young and Mr. Auld was accepted. However, the recommendation with respect to Mr. Bowban was not accepted. Mr. Bowban was merely told not to engage in that sort of activity again. Further the two days suspension of Bunger and Everson was affirmed.

9. The respondent's position is that Mr. Auld was discharged for cause and that Mr. Young was discharged for cause although in his case the claim is also made that he was a probationary employee and no cause was necessary for his dismissal. However, whether or not Mr. Young was a probationary employee has no bearing on this complaint, since a probationary employee is not deprived of rights under the Labour Relations Act. With respect to Mr. Auld it is clear that some time in early 1973 the administration of the Health Unit embarked on a course which had the obvious intention of dismissing Mr. Auld. It appears that each time Mr. Auld's performance was at all unsatisfactory a memorandum was sent from Mr. Scott the chief public health inspector to Mr. Auld telling him of defect in his performance. Further it appears that on January the 1st, the areas of the various health inspectors were re-arranged and Mr. Scott testified that he intentionally brought Mr. Auld in from a rural area to an urban area in order to keep an eye on him.

10. As a result of his unsatisfactory performance on May 1st, Mr. Auld's annual increment was withheld. He was, at that time given a warning that, unless his performance improved, he would not be given that increase. Apparently, Mr. Auld's performance improved and, on August 1st his annual increase was approved. However, when it became apparent that Mr. Auld was involved in the dissention arising out of Mr. Campbell's appointment, a decision was made to dismiss Mr. Auld.

11. The situation with Mr. Young was, however, quite different. Although the respondent alleged that certain aspects of his work performance were unsatisfactory, no warnings appeared to have been given Mr. Young. Although, there were serious lapses in the performance of his duties by Mr. Young, it appears no written warnings of the same type sent to Mr. Auld, were given to Mr. Young. Indeed, it appears that warnings of the type sent to Mr. Auld were not given to any other health inspectors in the Unit. Indeed, it would appear, that no intention to discipline Mr. Young was formed by the Health Unit, until it became apparent that Mr. Young was involved over the dissention resulting from the appointment of Mr. Campbell.

12. The complainant contends that the discharge of Mr. Young and

Mr. Auld was contrary to Section 58(a) or Section 58(c) of The Act. Those provisions read as follows:

58. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

(a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;

...

(c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

13. It should be emphasized that in complaints under Section 79 of The Act, the only matter upon which the Board can adjudicate is whether or not there has been a violation of some provision of The Labour Relations Act. From the preceding paragraphs, it should be apparent that the present dispute is part of a very complex situation. We wish, however, to make it manifestly clear that, we are not, in the context of this present case dealing with such matters as whether the appointment of Mr. Campbell was a proper one. Nor are we dealing with the question of whether the reaction of the employees to that appointment was justified. Nor are we dealing with whether the management of the Health Unit acted properly or responsibly in dealing with the unrest at the Health Unit amongst the public health inspectors. The adjudication of such matters is not before this Board; what is in issue is whether, when the Health Unit discharged Mr. Young or Mr. Auld any part of that decision was based upon a consideration of their activity in support of the complainant trade union.

14. Dealing first with Mr. Auld, we are satisfied on the evidence before the Board that Mr. Auld was discharged for some reason other than



his participation in the organizing campaign of the complainant trade union. Although the reason for Mr. Auld's discharge is not at all clear Mr. Auld was dealt with in a manner quite different from the other health inspectors. We are satisfied that in dismissing Mr. Auld, the respondent Health Unit was not motivated by Mr. Auld's support of the trade union.

15. However, when we turn to deal with Mr. Young, the matter is quite different. In Mr. Young's case there was no systematic documentation of poor performance. In this respect, Mr. Young appears to have been treated in a manner similar to the rest of the public health inspectors. In this regard, no formal warnings, either written or verbal were given to Mr. Young in instances where performance was alleged to be unsatisfactory by the respondent at the hearing. Thus, the respondent's allegation that the discharge was because of unsatisfactory performance is not tenable. The respondent further alleged that Mr. Young was discharged because of his participation in the dissension over the appointment of Mr. Campbell. Although Mr. Young went to Alderman Remus's house, this conduct was engaged in by other employees. Further, it is suggested that although he did not sign the letter to the Chairman of the Board of Health, he would have signed the letter had he not been a probationary employee. We find it hard to accept this latter reason as grounds for dismissing an employee.

16. The situation with respect to Mr. Young is made more complex when one has regard to the activity of other health inspectors whose conduct, in terms of the explanation given for Young's dismissal, was patently for worse conduct. These employees were not disciplined at all. In the present case, there is no doubt that the administration of the Health Unit knew of Mr. Young's activities during the organizing campaign of the complainant trade union. The respondent, on the other hand, has alleged that Mr. Young was dismissed for certain reasons. We find, however, that we cannot accept those reasons in the light of the evidence given in support thereof. Mr. Young was dealt with in a manner different from the other health inspectors. Viewing the situation as a whole, in the light of all the evidence, we find that the reasons given for Mr. Young's dismissal are sufficiently suspect as to cause the Board to conclude that the respondent took this opportunity to dismiss Mr. Young for reasons that include the fact that he had engaged in the organizing campaign of the complainant trade union. That being the case, the respondent in discharging Mr. Young, violated Section 58 of The Labour Relations Act.

17. In conclusion, for the foregoing reasons, the complaint with respect to Mr. Greg Auld is dismissed. The complaint, as it relates to Mr. Allan Young, is successful. The respondent will, therefore, reinstate Mr. Young in its employment forthwith, with full compensation from the date of discharge to the date of reinstatement. On consent, the

Board will remain seized of the matter, and if the parties are unable to agree on the appropriate amount of compensation, that issue will be determined by the Board upon the request of either party for a further hearing for that purpose.

6948-74-R: Labourers' International Union of North America Local #247 (Applicant) v. CORPORATION OF THE TOWNSHIP OF LOUGHBOROUGH (Respondent).

BEFORE: R.A. Furness, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: Raymond Koskie and M. Sullivan appearing for the applicant; W. G. Phelps appearing for the respondent.

DECISION OF THE BOARD: February 14, 1975.

. . .

3. This is an application for certification which was filed under the construction industry provisions of The Labour Relations Act. The applicant is seeking certification on behalf of a bargaining unit described as "all in the employ of the respondent in Board area #29, save and except non-working foremen and persons above the rank of non-working foreman (excluding office and clerical staff)".

. . .

5. The nature of the work performed by the employees in the bargaining unit which the applicant claims to be appropriate for collective bargaining is described by the respondent as "snow ploughing, sanding and clearing Township roads and maintenance of dump".

6. In paragraph 13 of its reply dated December 19, 1974, the respondent has stated:

"At the time of this Application for Certification and for several weeks prior thereto the employees affected by this Application were not employed in the construction industry. During the week in which the Application was filed they were mounting ploughing and sanding equipment on vehicles.

Under these circumstances we respectfully submit that the Application is not brought properly under the Construction Industry section of the Act and should accordingly be dismissed.

In the alternative we submit that the Application should be converted to an industrial Application and a new Notice to Employees and a new terminal date should be posted.

In a further alternative we submit that an appropriate bargaining unit is "all employees of the Respondent in the Counties of Lennox and Addington, Frontenac and the Townships of Rear of Leeds and Lansdowne, Rear of Yonge and Escott, Front of Yonge and Front of Escott in the County of Leeds engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and those above the rank of non-working foreman."

7. Counsel for the applicant informed the Board at the hearing that on the date that this application was made Mr. Caird was operating a sander on the roads, Messrs. Kemp, Ritchie and Watson were affixing blades to a truck for the purpose of snow ploughing and Mr. Green was the custodian of the garbage dump. Counsel agreed that on the date of the making of this application the respondent was not engaged in construction work.

8. The employees who are affected by this application are employed by the respondent throughout the year. On occasions these employees are engaged in digging drainage ditches on the sides of the roads, moving stones from a yard and filling in holes in roads. These employees use the respondent's equipment and use such equipment, inter alia, to grade roads. Counsel for the applicant, while conceding that certain aspects of the respondent's operations could be classified as construction work, requested that this application for certification be treated as an industrial application.

9. Counsel for the respondent stated that at the time this application was made the respondent was not engaged in construction work but that during the year the respondent was engaged in some construction work. However, counsel for the respondent stated that such construction work would occupy a very small percentage of the time of the employees affected by this application.

10. At this point in the hearing, the Board announced that it was satisfied that this application for certification was not an application for certification within the meaning of section 108 of The Labour Relations Act.



11. Counsel for the respondent argued that the Board had no power to convert this application into an industrial application in the absence of section 63(3) of the Board's Rules of Procedure. Counsel argued that section 63(3) had to be read in conjunction with section 3 of the Board's Rules of Procedure and that therefore the Board ought not to convert this application into an industrial application until it had extended the terminal date and served notice of such conversion on the employees who are affected by this application.

12. Counsel for the respondent stressed that since this application for certification was filed under the construction industry provisions of The Labour Relations Act rather than as an industrial application the Board ought to consider five factors and after taking such factors into consideration extend the terminal date and serve notice of the converted application on the employees who are affected by this application.

13. The five factors referred to by counsel for the respondent are:

- (a) The terminal date is shorter (one to four days) for a construction industry application. Hence there is shorter period of notice to the employees of the application.
- (b) There is not necessarily a hearing in an application for certification which has been filed under the construction industry provisions of The Labour Relations Act.
- (c) Where an application is filed under the construction industry provisions of the Labour Relations Act, an "industrial" trade union is not able to intervene.
- (d) Different types of bargaining units are determined in applications under the construction industry provisions of The Labour Relations Act. For example, bargaining units are described in terms of craft or occupation and are not defined with reference to a municipality but are defined in terms of a wider geographic area.
- (e) In applications filed under the construction industry provisions of The Labour Relations Act the membership position of an applicant is determined among only those persons who were at work on the date of the making of

the application rather than with reference to a broader period of time which is used in industrial applications.

14. Counsel for the respondent argues that these factors affect the respondent's expectations, the employees' expectations and other potentially affected trade unions. Counsel also raised the question of the actual notice to the employees affected by this application. It was agreed by the parties that the notice of this application (Form 52, Notice to Employees of Application for Certification, Construction Industry) was posted on the respondent's premises by a member of the Board's staff at 11:30 a.m. on November 29, 1974, and that the employees affected by this application had an opportunity to see this notice. The terminal date fixed for the application was December 3, 1974. The employees who are affected by this application were present at the hearing. One of these employees acted as their spokesman and informed the Board that the employees affected by this application were satisfied with the way things are now. The Board announced at the hearing that it would not direct that the terminal date be extended. The Board made this decision based on the fact that adequate notice of this application had been given to the employees who are affected by it.

15. Counsel for the respondent informed the Board that the respondent was not a party to any collective bargaining relationship. While agreeing that this application for certification was made in good faith under the construction industry provisions of The Labour Relations Act, counsel for the respondent pointed out that trade unions could abuse the Board's process by behaving in a manner similar to the conduct of the applicant. Over the years, the Board has had occasion to treat applications which were filed under the construction industry provisions of The Labour Relations Act as non-construction or general applications for certification. We are not aware of a single instance of either bad faith or abuse by a trade union in this regard.

16. The five factors referred to in paragraph thirteen herein do not raise any obstacles to the Board treating this application for certification as having been filed as a non-construction industry application. With reference to factor (a). There was sufficient notice of this application to both the employees affected by it and the respondent. In fact the respondent filed two replies to this application. Considering factor (b). The Board did hold a hearing of this application. Having regard to this fact, neither the respondent nor the employees affected by this application may claim prejudice in this respect. Turning now to factor (c). It is not correct to say that an industrial (non-construction) trade union may not intervene in an application for certification which has been filed under the construction industry provisions of The Labour Relations Act. There

is nothing in the Act, the Board's Rules of Procedure or the Board's practice to support the proposition advanced in factor (c).

17. Factor (d) refers to the determination of the appropriate bargaining unit. Bargaining units may be described in terms of craft or occupation in both types of applications for certification. With reference to the geographical area, it is important to observe that a bargaining unit determined in a non-construction industry application would normally be determined with reference to a municipality which is smaller in extent than a geographic area. On this point there would not be any prejudice suffered by either the respondent or the employees affected by this application.

18. Finally, with reference to factor (e), counsel for the respondent admitted that the respondent had only the five employees referred to in paragraph 4 herein who would be affected by the application. Hence it would not affect the count and the membership position of the applicant. In our view, factor (e) was potentially the most meritorious raised by counsel for the respondent. However, on the facts of this application factor (e) is a distinction without meaning.

19. The Board is of the view that it has the power to convert the present application into a non-construction industry application. First of all, the Board is master of its own procedure. See Cedarvale Tree Services v. Labourers' International Union of North America 71 CLLC ¶14,087. Section 63(3) of the Board's Rules of Procedure clearly indicates that the Board has the discretion to consider this application as a non-construction industry application. In addition, section 59 of The Board's Rules of Procedure and section 103 of The Labour Relations Act state that no proceedings under the Rules or Act are invalid by reason of any defect in form or technical irregularity. There is no evidence of any prejudice suffered by either the respondent or the employees affected by this application. If an applicant is entitled to a remedy, a technical formality in the framing of its application should not prevent the applicant from seeking its remedy. Reference is made to Genaire Ltd. and International Association of Machinists 58 CLLC ¶15,388 and ¶15,416. The filing of this application for certification as a construction industry application was, having regard to the variable nature of the respondent's operations, at most merely a technical irregularity.

20. At the time of the filing of this application the respondent's operations were clearly not operations within the construction industry. Throughout the rest of the year there are certain aspects of the respondent's operations which may marginally be associated with the construction industry. However, on viewing these marginally associated activities of the respondent in the context of its entire operations, we find that the



respondent is not an employer within the meaning of section 106(c) of The Labour Relations Act.

21. The Board further finds that all employees of the respondent, save and except road superintendent, persons above the rank of road superintendent and office staff, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

23. A certificate will issue to the applicant.

7099-74-R: York University Staff Association (Applicant) v. YORK UNIVERSITY (Respondent) v. Group of Employees (Objectors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members P. J. O'Keeffe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: F. W. Park, G. Paddle, M. Mayson, J. Goldhar for the applicant; D.F.O. Hersey, D. J. Mitchell and E. McTaggart for the respondent; S. B. Pitkin for the objectors.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER P. J. O'KEEFFE: February 19, 1975.

1. This is an application for certification filed by The York University Staff Association for a group of the respondent's employees.

2. The Registrar in a letter dated December 31, 1974, advised the applicant that it must be prepared at the hearing scheduled in this matter to satisfy the Board that its organization is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

3. The Labour Relations Act defines "trade Union" as follows:

S1-(1) In this Act,

(n) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers and include a provincial, national or international trade union.

4. In determining whether an applicant organization is a trade union the Board has been instructed to restrict its inquiry to the

following question [see; The CSAO National (Inc.) Case 72 CLLC ¶14,118 (CA) per Arnup J.A. at p. 498];

"Is the applicant a trade union as defined by the Act?"

5. In answering that particular question the Board is concerned with the following factors;

- (i) is the applicant "an organization of employees" as evidenced by a written constitution, charter or by-laws duly enacted by members of the organization?;
- (ii) does "the organization" purport to represent employees as indicated in its constitution, charter or by-laws"...for purposes that include the regulation of relations between employees and employers..."
- (iii) does "the organization" have the capacity to incur the obligations as well as assume the privileges of representing employees for collective bargaining purposes? In this regard has the organization duly appointed officers authorized to carry out the objects of the trade union?

6. The Board is prohibited from certifying a trade union that contravenes section 12 of the Act. As an incident to a Board inquiry into whether a trade union is an organization within the meaning of section 1(1)(n) of the Act, an issue may arise as to whether a trade union is prohibited from being certified. That question when it does arise is separate and apart from the purpose of the initial inquiry. That is to say a finding with respect to an issue section 12 is independent of the preliminary question forming the subject matter of the Registrar's letter. A positive finding, however, that a trade union has contravened the provisions of section 12 of the Act may render a finding under S1(1)(n) of the Act unnecessary or superfluous. (see; The Burlington Nelson Hospital Case 63 CLLC ¶16,269).

7. In the instant case, the respondent initially suggest to the Board that the applicant may have been the recipient of employer or other support through the participation of managerial personnel in the applicant's formation and administration as well as its effort to organize employees of the respondent for collective bargaining purposes. Indeed the respondent alleged that certain named persons including the applicant's incumbent President are engaged in a managerial capacity

and actively involved themselves in the organizational campaign that precipitated the instant application. In other words, the obvious inference of the respondent's representations was that the applicant was disqualified from being certified. During the course of the initial hearing scheduled in this matter, the Board adjourned the proceedings in order to enable witnesses to be summonsed to adduce evidence on the issues raised by the respondent. At the second hearing counsel on instruction from his client indicated that the respondent was neither opposing nor supporting the applicant on the issue of the applicant's status but requested the Board satisfy itself with respect to the ingredients necessary to determine that question in accordance with its past policy considerations. Furthermore counsel indicated that he had no evidence to call with respect to the status of the applicant association as a prohibited trade union for purposes of S12 of the Act. In other words, no evidence was adduced on the issues for which the adjournment was granted.

8. The Board is satisfied having regard to the evidence adduced before us that the applicant organization is not prohibited by S12 of the Act from being certified as bargaining agent of the employees affected by this application. We are further satisfied that any question raised in this regard has been withdrawn and abandoned by the respondent.

9. The Board finds on the basis of the amendments to the constitution adopted by the applicant's members on June 19, 1974, and the uncontradicted evidence related thereto that;

- (i) sufficient measures were taken by the applicant to constitute itself "an organization of employees",
- (ii) the aims of the applicant as indicated in its constitution include the regulation of relations between employees and employers for collective bargaining purposes' and,
- (iii) the officers elected in February, 1974, were confirmed as officers after June 19, 1974 as a result of the assumption by them of the duties and responsibilities of executives at the applicant's membership meetings as well as in the discharge of other duties on behalf of the applicant.

10. The Board, having regard to these findings, is satisfied that the applicant is a trade union within the meaning of section 1(1)(n) of the Act.



DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: February 19, 1975.

This is an application for certification by The York University Staff Association for certain of the employees of York University.

The registrar by a letter dated December 31, 1974, advised the applicant that it must be prepared at the initial hearing to satisfy the Board that its organization was a trade union within the meaning of Section 1(1)(n) of The Labour Relations Act.

"Trade Union" is defined in The Labour Relations Act as follows:

S1-(1)(n) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national or international trade union and a certified council of trade unions.

The significance of finding status under section 1(1)(n) is important not only for the present application, but also in regard to any subsequent applications that may result by virtue of section 94 of The Labour Relations Act.

Section 94 of the Act states as follows:-

"Where in any proceeding under this Act the Board has found or finds that an organization of employees is a trade union within the meaning of clause n of subsection 1 of section 1, such finding is prima facie evidence in any subsequent proceeding under this Act that the organization of employees is a trade union for the purposes of this Act."

In determining the question of status, the Board has always had significant regard for the provisions of Section 12 of The Labour Relations Act.

Section 12 of the Act states as follows:-

"The Board shall not certify a trade union if any employer or any employers' organization has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of his race, creed, colour, nationality, ancestry or place of origin."

Heretofore, in considering the affect of Section 12 as applied to a purported trade union, in my respectful opinion, the Board has cast a searching, and almost a suspicious eye upon new organizations coming before the Board to obtain status.

I have read the decision of the majority and it would seem apparent to me that the Board will not in future be so inquisitive as to the background of such an organization. Indeed, I find the decision of the majority innovative, constructive and a totally fresh approach to the question which may well serve to give guidelines to subsequent organizations which appear before the Board seeking status from it.

I need only to note some of the background of the applicant to indicate the departures which the majority has made from previous jurisprudence of the Board.

The original constitution of the applicant was adopted on the 15th day of April, 1970 and provided under the Article entitled "Membership" the following:-

Article III      MEMBERSHIP

- |             |  |
|-------------|--|
| Section I   | Membership in this Association shall be open to all permanent staff of the University not currently represented by a bargaining agent. |
| Section II  | Permanent part-time staff of the University may apply for membership in the Association.   |
| Section III | Membership cards will be issued by the Membership Secretary upon payment of annual dues.   |

It is clear from that Constitution, and was confirmed at the hearing, that membership was open to all permanent staff of the University not represented by a bargaining agent, whether they be management or not.

The President who was elected prior to the incumbent President was the Associate Dean of Administrative Studies.

For the purpose of disseminating information to its members, the Association had the use of, and indeed used, the employers' daily bulletin.

The present President of the Association was elected under the terms of the Constitution adopted April 15th, 1970. The election

of officers took place on February 21st, 1974. The election of the President had not been reaffirmed up to the date of the application herein.

Subsequently, the members purported to amend the provisions of the original constitution under the provisions of that constitution in June of 1974.

Article XI entitled Referendums and Amendments reads as follows:-

Article XI    REFERENDUMS AND AMENDMENTS

Section II      Amendments to the Constitution and By-Laws must be decided by a two thirds (2/3) majority vote, either in a referendum or in a General Meeting. Notice of submission of such shall be given in the agenda of meeting.

Ballots respecting the change in the Constitution were sent out to all members of the Association including all management members of the Association and those employed in a confidential capacity in matters relating to labour relations. Included amongst the members who received ballots was the Director of Personnel.

In an attempt to sign up additional membership, the Association availed itself of the privilege of setting up booths around the premises of the employer.

I caution to add, however, that my listing of some of the background of the Association, is not done to embarrass either the University or the applicant association. It is my sincere belief that the applicant has attempted to divest itself of any managerial participation in the future by changing its constitution in June of 1974. However, the evidence discloses that in attempting to achieve such purpose it sent ballots to managerial personnel who were then members of the association for use by them in the vote on the proposed constitution, it used the facilities of the employer press, and it openly solicited membership at booths on the employer's premises. To me therefore, these are variances by the majority from previous tests applied by this Board and indicate incidents which, apparently, future panels of this Board may ignore when considering the question of status.

To determine the variances, one need only examine some of the previous jurisprudence of this Board and surmise that such jurisprudence can apparently now be set aside.



See, for example:

Leamington District Memorial Hospital Case [1973]  
OLRB Rep. June, 376.

Kelly Funeral Homes Limited [1973] OLRB Rep.  
February, 87.

Crowe Foundry Limited [1969] OLRB Rep. May, 218

Kemp Products Limited [1966] OLRB Rep. April, 39

Basic Structure Steel Fabricators Limited [1966]  
OLRB Rep. March, 888.

Gillies Bros. & Co. Ltd. [1964] OLRB Rep. December,  
420.

Phillips Transports Limited [1964] OLRB Rep. May, 66.

Joseph Brant Staff Association Case 63 CLLC para. 16,269

Burlington-Nelson Hospital [1962] OLRB Rep. November,  
285

McBride Motors Limited [1962] OLRB Rep. October, 217

Canadian Home Products Limited [1961] OLRB Rep.  
August, 158.

ADDENDUM TO THE DECISION OF THE MAJORITY: February 19, 1975.

1. The majority wishes to make a brief comment concerning the concurring opinion of Mr. J.E.C. Robinson.

2. For purposes of the record the majority decision does not represent nor is it intended to represent any departure from the Board's past policy considerations with respect to the requirements to prove that an organization is a trade union for purposes of Section 1(1)(n) of the Act. Nor indeed was it the intention of the majority that the decision permit trade unions otherwise prohibited by Section 12 of the Act to acquire bargaining rights.

3. The Board's findings in the instant case are based on evidence adduced by the parties after having been given every opportunity to call witnesses relevant to the status issue as well as to whether the applicant was a trade union prohibited from being certified under Section 12 of the Act.

4. The majority indicated in its decision that we were satisfied that sufficient measures were taken by the applicant organization to constitute itself a trade union. The Board intended by that finding to indicate that the course of action taken by members of the applicant in February, 1974 and thereafter purged that organization of any suggestion of a managerial taint. That is to say, the amendments to the constitution on June 19, 1974 in effect disqualified persons engaged in a managerial capacity from being members in the applicant organization and thereby precluded them from participating in the activities of that organization.

5. The respondent was given every opportunity to dissipate the evidence adduced by the applicant in support of its claim for status as a trade union. In the event that such evidence had been adduced with respect to the allegations initially filed by the respondent then the authorities cited by our colleague may have borne some relevance to the issues before the Board.

992-71-R: THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION (Applicant) v. Labourers' International Union of North America, Local 506 (Respondent) v. Erectors Division, Ontario Precast Concrete Manufacturers' Association (Intervener #1) v. Labourers' International Union of North America, Ontario Provincial District Council (Intervener #2).

BEFORE: G. W. Reed, Q.C., Chairman, and Board Members E. Boyer and F. W. Murray.

APPEARANCES AT THE HEARING: S. C. Bernardo and G. Becigneul for the applicant; R. Koskie and G. Cragg for the respondent; no one appearing for Intervener #1; no one appearing for Intervener #2; R. Baldwin and C. W. Humphreys for Bradsil Contracting; R. Baldwin for Whitney Construction Ltd.; G. Atlin, Q.C., for Team Construction; W. M. Temple and J. F. O'Connell for Codeco Inducon.

DECISION OF THE BOARD: February 18, 1975.

1. This is an application for accreditation in which the applicant seeks to be accredited as the bargaining agent for a unit of employers. It is clear from the evidence before the Board that the respondent is entitled to bargain on behalf of more than one employer in the sector of the construction industry and in the geographic area which form the subject matter of this application. The Board therefore finds that it has jurisdiction under section 113 of the Act to entertain this application

. . .

4. Having regard to the Interim Report of the Examiner dated 27 September, 1972, and to his final report dated 10 May, 1973, the Board finds that:

"all employers of employees for whom the Respondent has bargaining rights in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario in the Industrial, Commercial and Institutional Sector save and except Employers of employees employed in all phases of industrial plant maintenance and repair, Employers of employees employed as Journeymen Stone Cutters and Planermen working at or out of the Employers' premises and Employers of employees throughout the Province of Ontario:

- (a) in all phases of erection, installation and finishing of precast concrete products and other related components in the building and construction industry;
- (b) in all phases of insulation and waterproofing work with mastic, asphalt and other related products in the building and construction industry;
- (c) in all phases of drilling and saw-cutting of concrete, masonry or other similar substances or materials in the building and construction industry;
- (d) in all phases of post-tensioning and prestressing in the building and construction industry;
- (e) in the construction of railroad sidings and spur lines"

constitute an appropriate unit of employers for collective bargaining.

. . .

6. During the inquiry conducted by the Examiner the respondent trade union raised for the first time the question as to whether certain groups of employers should be treated as constituting one employer for



the purposes of the Act including the present application because, it was alleged, at all material times associated or related activities or businesses were being carried on by the employers in each group, under common control or direction within the meaning of section 1(4) of the Act. A hearing was held for the purpose of considering the jurisdiction of the Board respecting the application of section 1(4) of the Act and, assuming such jurisdiction, to show cause why the Board should consider the application of the said section in all of the circumstances of this application.

7. After considering the argument presented at the hearing along with the written submissions of the parties subsequent to the hearing, we are satisfied that the Board has jurisdiction to inquire and, further, in the light of the jurisprudence referred to in argument ought to inquire into the matters raised by the respondent under section 1(4) of the Act. In so holding we are not to be understood as saying that the Board must necessarily apply the section in the circumstances of this case. That is a question which the Board may be called on to determine after having heard the evidence and submissions of the parties during the inquiry.

8. However the fact that further inquiry is necessary does not mean that an accreditation order may not issue prior to the inquiry. If the Board is satisfied that the applicant has the necessary majorities under section 115(2) of the Act whether or not the groups of employers involved are found to constitute one employer for the purposes of this application, we see no reason for further delaying of an accreditation order which may otherwise properly issue.

. . . .

14. In Paragraph #7 (supra) the Board left the matter of whether certain employers constitute one employer within the meaning of Section 1(4) of the Act open to further evidence and representations by the parties. The allegations in regard to Section 1(4) deal with four separate instances where it is claimed that two companies ought to be dealt with as one employer for the purposes of Section 115(2) of the Act. In each of these four separate instances, one of the two employers appears on Final Schedule "E" above and these employers are also claimed by the applicant as represented by them. The four remaining employers have not been dealt with so far in this application. In these circumstances it is obvious that regardless of whether or not the Board finally applies Section 1(4) in any or all of the four instances alleged the determination in paragraph #13 will not be varied.

. . . .

17. Having regard to all of the above findings a Certificate of

Accreditation will issue to the applicant for the unit of employers found to be an appropriate unit of employers in paragraph #4, and in accordance with the provisions of section 115(2) of the Act for such other employers for whose employees the respondent may after September 17, 1971 obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the unit of employers.

7198-74-R: YARNTEX PERTH, DIVISION OF YARNTEX CORPORATION LIMITED v. Canadian Union of Operating Engineers, Local 101, and Textile Workers Union of America (Respondents).

- and -

7221-74-R: YARNTEX PERTH, DIVISION OF YARNTEX CORPORATION LIMITED (Applicant) v. Canadian Union of Operating Engineers, Local 101 (Respondents).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and L. Hemsworth.

APPEARANCES AT THE HEARING: J. Durand and R. Meunier for the applicant; K. Gilbert for the respondent Operating Engineers; no one appearing for the respondent Textile Workers Union.

DECISION OF THE BOARD: February 21, 1975.

1. The parties agreed that the two applications be consolidated and heard together.

2. The name "Yarntex Corporation Limited" appearing in the style of cause of these applications as the name of the applicant is amended to read: "Yarntex Perth, Division of Yarntex Corporation Limited".

3. This is an application filed under Section 55 of the Act where the applicant requests the Board to exercise its powers under Section 55(4) of the Act. The applicant has also filed an application under Section 51 of the Act where it requests the Board to declare that the respondent Canadian Union of Operating Engineers, Local 101 no longer represents the employees in the bargaining unit described in the collective agreement with the predecessor employer.

4. The circumstances giving rise to these applications are straightforward and not disputed by the parties. It appears that on August 27, 1973 the applicant purchased the business of Acritex Yarns Limited. At the material time of the sale the respondent Canadian Union of Operating Engineers, Local 101 held bargaining rights for a craft unit of employees engaged in the applicant's boiler room and The Textile Workers of America held bargaining rights for an all employee plant unit. By operation of

Section 55(2) of the Act the applicant became bound by the terms of the collective agreements entered into between the predecessor employer and the respondent trade unions named herein.

5. It appears in September, 1974, the applicant automated its boiler room operations by replacing three "Cleaverbrook Boilers" with "The Clayton Steam Generator". As a result of this conversion the applicant by letter dated September 12, 1974 informed the respondent (C.U.O.E.) "that the services of the third class engineers will no longer be required as of September 12, 1974." The applicant later discovered as cooler weather settled in that the new apparatus did not adequately serve the applicant's purposes. As a result, in late October a Cleaverbrook Boiler was reinstalled. A third class engineer was recalled in accordance with the seniority provisions of the collective agreement to operate the boiler. The respondent trade union was not notified of these adjustments subsequent to the installation of the automated apparatus. It was also admitted by the applicant that dues were not deducted and forwarded to the respondent in accordance with union security clause set out in the collective agreement. At all material times surrounding the instant application the applicant employed one third class stationary engineer to operate "The Cleaverbrook Boiler".

6. The applicant submits that the Board should exercise its powers under Section 55(4) to adjust the composition of the bargaining unit for purposes of determining "the like bargaining unit" under section 55(2) by ruling that the one stationary engineer be included in the all employee unit represented by the respondent Textile Workers' Union of America. In other words, the applicant is requesting the Board deprive the stationary engineer of representation by the respondent Canadian Union of Operating Engineers by defining the "like bargaining unit" to include all employees employed by the successor employer as of the date of the application. The inevitable consequence of the exercise by the Board of its powers as requested would be the termination of C.U.O.E.'s bargaining rights.

7. Alternatively, the submission is made that the respondent C.U.O.E. has abandoned its bargaining rights pursuant to Section 51(1) of the Act in that it has failed to give written notice under Section 45 of the Act with a view to bargaining for renewal of the collective agreement that had expired on January 23, 1975. The applicant argued that failure by the respondent to exercise its rights under section 45 is conclusive evidence of an abandonment of bargaining rights in accordance with the literal interpretation attached by counsel to section 51(1) of the Act.

8. The Board finds that the applications must fail on both submissions put forward by counsel. The objective of Section 55



of the Act is to preserve the bargaining rights of a trade union in the event of a sale or other disposition of a business. To accede to the request of the applicant that the Board exercise its powers under section 55(4) to place the stationary engineer in an all employee unit would in effect defeat the rights of a trade union holding bargaining rights for employees in a like bargaining unit at the time of the disposition of the predecessor's business. For purposes of defining "a like bargaining unit" pursuant to Section 55(2) of the Act, the Board usually holds that the bargaining unit described in the collective agreement (or Board certificate) in existence at the time of the sale is prima facie appropriate. The exercise of Board powers under Section 55(4) is intended to facilitate the transition of bargaining rights having regard to the competing and often contradictory concerns of the parties affected by the sale. The Legislature has restricted the circumstances wherein the termination of an incumbent trade union's bargaining rights could arise to "a change in character" of a business within the meaning of Section 55(5) of the Act. No such allegation has arisen in the instant proceedings. We therefore are constrained to permit the achievement of the applicant's purpose on the basis of its representations under Section 55(4) of the Act.

9. We are of a like opinion with respect to the representations made pursuant to Section 51 of the Act. The Board has often repeated that Section 51 of the Act must be used as "a shield and not a sword". In the circumstances where a trade union fails to forward the interests of the employees in a bargaining unit the Board usually requires the trade union to provide us with a reasonable explanation. Mere failure to exercise rights to give notice under Section 13 or Section 45 of the Act, as the case may be, does not necessarily give rise to the circumstances justifying the ipso facto termination of bargaining rights. Only if the Board is not satisfied with the explanation put forward by the trade union will we exercise our discretion to either direct a representation vote or make a declaration of abandonment without a vote. One overriding consideration the Board weighs in the exercise of its discretion is the prejudice to the party filing the application should the Board not accede to its request. In the instant case no evidence was adduced to our satisfaction that would indicate that either the employer or the employees in the bargaining unit have been negatively affected by the respondent's failure to give written notice under Section 45. In any event, we are satisfied that the respondent has offered a reasonable explanation for its failure to exercise its rights under section 45 of the Act in that it was informed by the applicant in September, 1974, that the bargaining unit had been depleted of members. Furthermore the respondent had not been informed at a later date that an employee had been recalled for the reasons set forth in paragraph 5 herein. In other words, it appears that at the time of the expiry of the collective agreement the exercise

by the respondent of its rights to bargain would have been an impractical gesture having regard to the information before it. Furthermore, we are of the view that had the applicant employer met its obligations under the union security provisions of the subsisting collective agreement at the time the stationary engineer was recalled, the respondent would then have been in a position to forward the interests of the one employee it continued to represent as the bargaining agent.

10. For the reasons set out herein the Board finds that the applications are dismissed.

7042-74-U: The Canadian Workers Union (Applicant) v. THE BURLINGTON GOLF AND COUNTRY CLUB LTD. (Respondent).

BEFORE: George S.P. Ferguson, Q.C., Vice-Chairman, and Board Members E. Boyer and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Gary Perly and Barry Lord for the applicant; D.L. Brisbin and Hugh Bell for the respondent.

DECISION OF THE BOARD: February 24, 1975.

1. The applicant seeks consent to institute a prosecution of the respondent for an alleged violation of section 14 of the Labour Relations Act, in that the respondent has failed to bargain in good faith and make every reasonable effort to make a collective agreement.

2. On September 30, 1974, the applicant was certified as bargaining agent for certain outside workers employed by the respondent. Notice to bargain was served by the applicant on the respondent on October 7, 1974. The first negotiating meeting between the parties was held on October 23, 1974. Further meetings were held on October 30th and November 1st, 1974. The applicant provided the respondent with written proposals on October 30th although it had previously provided a written memorandum of those matters which it would like to discuss in negotiations.

3. On October 30th, the respondent undertook to present its counter proposals at the meeting scheduled for November 1, 1974, but it failed to do so. At the meeting of November 1, the respondent informed the negotiators for the applicant that it was not prepared to continue negotiations until the applicant unit removed a picket line which has been established by it on November 1, in front of the club house of the respondent.

4. There have been multiple proceedings before this Board in respect to the relationship between the applicant and the respondent.

These proceedings involve applications for consent to prosecute the respondent for an alleged lockout either or a group of employees or individual employees. There have also been a series of complaints under section 79 of the Act. Up to the date of this decision all of the applications which have been brought by the applicant have either been withdrawn or dismissed by the Board. For the purposes of this application, however, we are particularly concerned with the fact that on December 3, 1974, the Board did consent to the institution of a prosecution against the respondent for an alleged violation of section 14 in that the respondent did not bargain in good faith on November 1, 1974, up to and including November 7th, 1974. The current application deals with events on or after November 8th, 1974.

5. The applicant has specifically confirmed that the facts before the Board in this case are identical to the facts which were placed before the Board in the earlier application for consent to institute a prosecution for an alleged violation of section 14 as noted above.

6. There is no doubt, that on or after November 8, 1974, the respondent has continued to refuse to negotiate with the applicant due to the fact that the picket line continues to exist. The applicant has not indicated any willingness to remove this picket line which the applicant alleges to be lawful. The respondent continues to allege that the picket line is unlawful and that there has been no lockout of the members of the applicant nor any dismissals of employees in a manner contrary to the Act.

7. The Board is therefore now faced with a repetition of allegations found in an earlier application for consent to institute a prosecution.

8. The decision of the Board to issue consent to prosecute on December 3, 1974, has not served to change the position of the parties. The picket line continues as does the dispute as to whether or not such picketing is lawful.

9. Having regard to the particular circumstances of this case as confirmed by the evidence and the representations made by the parties, it is our view that this is a situation where the Board must exercise its discretion by denying the institution of a further prosecution in respect to events which occur on and after November 8, 1974, up to the hearing of this application, January 27, 1975.

10. The application is dismissed.



BEFORE: Rory F. Egan, Alternate Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: R. Lopez for the complainant; E. Baillargeon, A. Gauthier, G. Barnett and E. Dominato for the respondent; B. R. Baldwin, R. J. O'Connor and Z. Asbell for the intervener.

DECISION OF THE BOARD: February 28, 1975.

1. This is a complaint under section 79 of the Act in which the complainant alleges that he has been dealt with by the respondent contrary to the provisions of section 60 of The Labour Relations Act.

2. Section 60 of the Act reads as follows:

A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.

3. The complainant alleges that he was laid off by the intervener on November 24, 1974 while journeymen with less seniority remained at work. He complains that the respondent refused to accept and process a grievance relating to these allegations. The complainant is of the opinion that his seniority date should be June 26, 1967, whereas the seniority list indicates that his seniority date is September 26, 1969. His contention is that "past practices" have been applied in a different way to him than it has been to other employees.

4. The records indicate that from June 26, 1967 to August 1, 1967, the complainant was in the classification of Jig and Fixture. From August 17, 1967 until September 26, 1969, the complainant was in the Machine Repair classification. From September 26, 1969 until the present date, the complainant has been in the Layout - Metal and Wood Inspector classification.

5. The evidence of the respondent is that under the provisions of the collective agreement, which incorporate past practice insofar as skilled trades seniority is concerned, the transfer of an employee from one skilled trade classification or classification group to another means a loss of seniority in the prior skilled trade classification or group and the commencement of a new seniority status on

the date of transfer into the new trade. The Board is satisfied on the evidence presented by the respondent that the foregoing indicates a true picture of the customary application of past practice to seniority in the skilled trades.

6. The evidence is that at one period the complainant was credited with seniority in two skilled trades classifications. This fact, according to the uncontradicted evidence heard by the Board, was the result of an error on the part of the intervener. This was discovered as the result of an attempt by the complainant to have an adjustment made to his seniority on the basis of his claim that he had lost a month's seniority when he moved from the one skilled trade classification to the other. The result of this incident was that his seniority in his present classification was corrected and set at September 26, 1969, that being the date of his entry into the Layout - Metal and Wood Inspector classification, and his seniority in the previous classification was cancelled altogether.

7. The uncontradicted evidence of the respondent further establishes that the terms of the collective agreement and the past practices with respect to skilled trades seniority were also applied in the same manner and at the same time the correction was made in the seniority of the complainant with respect to two other tradesmen whose seniority had been incorrectly recorded. Their seniority was similarly reduced to the date of their transfer from a previous skilled classification into a new skilled trades classification. It is clear, therefore, that the complainant was treated in no way that was different from the treatment accorded to the other employees found to be in a similar situation with respect to their seniority. The evidence also established that the journeymen referred to in the complaint who were retained in employment had, in fact, more seniority than the complainant.

8. The past practices referred to by the complainant are not set out in the current collective agreement which was filed with the Board but were established to the satisfaction of the Board by the evidence adduced by the respondent. The Board is satisfied that the terms of the agreement and the past practices were applied to the case of the respondent in a manner that was neither arbitrary, discriminatory nor in bad faith but, rather, were, in fact, applied in precisely the same way to the complainant as to the other employees referred to above.

9. The application is accordingly dismissed.









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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING FEBRUARY 1975

BARGAINING AGENTS CERTIFIED DURING FEBRUARY

No Vote Conducted

992-71-R: The General Contractors' Section of the Toronto Construction Association (Applicant) v. Labourers' International Union of North America, Local 506 (Respondent) v. Erectors Division, Ontario Precast Concrete Manufacturers' Association (Intervener #1) v. Labourers' International Union of North America, Ontario Provincial District Council (Intervener #2).

Unit: "all employers of employees for whom the Respondent has bargaining rights in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario in the Industrial, Commercial and Institutional Sector save and except Employers of employees employed in all phases of industrial plant maintenance and repair, Employers of employees employed as Journeymen Stone Cutters and Planermen working at or out of the Employers' premises and Employers of employees throughout the Province of Ontario." (no employees in the unit). ((A) IN ALL PHASES OF ERECTION, INSTALLATION AND FINISHING OF PRECAST CONCRETE PRODUCTS AND OTHER RELATED COMPONENTS IN THE BUILDING AND CONSTRUCTION INDUSTRY; (B) IN ALL PHASES OF INSULATION AND WATERPROOFING WORK WITH MASTIC, ASPHALT AND OTHER RELATED PRODUCTS IN THE BUILDING AND CONSTRUCTION INDUSTRY; (C) IN ALL PHASES OF DRILLING AND SAWCUTTING OF CONCRETE, MASONRY OR OTHER SIMILAR SUBSTANCES OR MATERIALS IN THE BUILDING AND CONSTRUCTION INDUSTRY; (D) IN ALL PHASES OF POST-TENSIONING AND PRESTRESSING IN THE BUILDING AND CONSTRUCTION INDUSTRY; (E) IN THE CONSTRUCTION OF RAILROAD SIDINGS AND SPUR LINES"). (THE BOARD NOTED THE AGREEMENT OF THE PARTIES WITH REGARD TO EMPLOYERS OF EMPLOYEES FOR WHOM THE RESPONDENT HAS BARGAINING RIGHTS IN BOARD AREA NO. 8, THAT THE SPORTSMEN'S SHOW, THE CANADIAN NATIONAL EXHIBITION AND THE TORONTO BOARD OF EDUCATION ARE NOT EMPLOYERS INCLUDED IN THE UNIT OF EMPLOYERS BECAUSE THEY WERE NOT, AT THE RELEVANT DATE, ENGAGED IN THE CONSTRUCTION INDUSTRY.).

(1975) 2 OLRB M.R. - PAGE 134.

2845-72-R: Toronto Sheet Metal and Air Handling Group (Applicant) v. Sheet Metal Workers' International Association, Local Union #30 (Respondent) v. Stainless Steel Equipment Manufacturers et al (Intervener #1) v. Residential Sheet Metal Contractors Organization (Intervener #2).

## [RE: BARRIE AND VICINITY COLLECTIVE AGREEMENT]

Unit: "Halton County with the exception of the west side of Oakville Creek in Trafalgar Township; Nelson and Nassawageya Townships; Peel County; Erin Township in Wellington County; Dufferin County; Simcoe County; Metropolitan Toronto; York County; County Ontario; the Townships of Cartwright and Darlington in Durham County; District of Muskoka and the Townships of Carling, Ferguson, McDougall, McKellar, Christie, Foly, Conger and Humphries in the District of Parry Sound in the Province of Ontario." (no employees in the unit).

(1975) 2 OLRB M.R. - PAGE 114.

6546-74-R: The Canadian Union of Public Employees (Applicant) v. Oshawa General Hospital (Respondent) v. Ontario Nurses' Association (Intervener).

Unit #1: "all office and clerical employees of the respondent at Oshawa, save and except supervisors, persons above the rank of supervisor, executive secretaries to the following: President, Executive Director, Director of Medical Services, Director of Finance, Director of Hospital Services, Director of Nursing; technical personnel, registered and graduate nurses, personnel staff, students employed during the school vacation period, persons regularly employed for not more than 24 hours per week, and employees covered by existing collective agreements between the respondent and The Canadian Union of Public Employees, Local 45; Nurses Association, Oshawa General Hospital; The Canadian Union of Operating Engineers; and The Civil Service Association of Ontario." (90 employees in the unit). (FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SPEECH THERAPISTS, BACTERIOLOGISTS, BIOCHEMISTS, VIROLOGISTS, GRADUATE DIETITIANS, UNDERGRADUATE DIETITIANS, STUDENT DIETITIANS, PHOTOGRAPHER, METHODS ANALYST, PROFESSIONAL PSYCHIATRIC STAFF AND CLINICIANS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRIC SHOCK THERAPISTS, LABORATORY, RADIOLOGISTS, PATHOLOGICAL, ELECTRO-CARDIOLOGICAL AND RESPIRATORY TECHNOLOGISTS, GRADUATE RECORD TECHNICIANS.).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

6653-74-R: Stratford Typographical Union Local 139, International Typographical Union (Applicant) v. The Beacon Herald of Stratford Limited (Respondent).

Unit: "all employees of the respondent engaged in News - Editorial and Photography Departments, save and except Managing Editor, City Editor, Co-Publishers, Confidential Secretary to the Co-Publishers, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (11 employees in the unit).



(1975) 2 OLRB M.R. - PAGE 103.

6783-74-R: Ontario Nurses' Association (Applicant) v. Riverside Hospital of Ottawa (Respondent) v. Group of Employees (Objectors).

Unit #1: "all graduate and registered nurses engaged in a nursing capacity by the respondent at Ottawa, Ontario, save and except head nurse and persons above the rank of head nurse, I.V. Charge Nurse, Infection Control Nurse, Director of Inservice Education, Health Nurse, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (140 employees in the unit).

Unit #2: "all graduate and registered nurses engaged in a nursing capacity by the respondent at Ottawa, Ontario, regularly employed for not more than twenty-four hours per week, save and except head nurse and persons above the rank of head nurse, I.V. Charge Nurse, Infection Control Nurse, Director of Inservice Education, Health Nurse and students employed during the school vacation period." (113 employees in the unit). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT EMPLOYEES CLASSIFIED BY THE RESPONDENT AS "NON-REGISTERED GENERAL STAFF NURSES" ARE INCLUDED IN THE APPROPRIATE BARGAINING UNITS.).

6948-74-R: Labourers' International Union of North America Local #247 (Applicant) v. Corporation of the Township of Loughborough (Respondent).

Unit: "all employees of the respondent, save and except road superintendent, persons above the rank of road superintendent and office staff." (4 employees in the unit).

(1975) 2 OLRB M.R. - PAGE 122.

7078-74-R: Ontario Nurses' Association (Applicant) v. General Motors of Canada Limited (Respondent).

Unit: "all registered and graduate nurses employed by the respondent at St. Catharines, Ontario, in a nursing capacity save and except supervisor-remedial and persons above the rank of supervisor." (10 employees in the unit). (ON AGREEMENT OF THE PARTIES).

7080-74-R: Ontario Nurses' Association (Applicant) v. Beacon Hill Lodges of Canada Ltd. (Ottawa, Ontario) (Respondent).

Unit #1: "all registered and graduate nurses employed by the respondent at Ottawa, Ontario, engaged in a nursing capacity save and except Director of Nursing, persons above the rank of Director of Nursing and persons

regularly employed for not more than twenty-four hours per week." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all registered and graduate nurses employed by the respondent at Ottawa, Ontario engaged in a nursing capacity regularly employed for not more than twenty-four hours per week, save and except Director of Nursing and persons above the rank of Director of Nursing." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7084-74-R: Ontario Nurses' Association (Applicant) v. Shelburne District Hospital (Respondent).

Unit: "all registered and graduate nurses employed in a nursing capacity by the respondent in Shelburne, Ontario, save and except Supervisors and persons above the rank of Supervisor." (15 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7089-74-R: Ontario Nurses' Association (Applicant) v. Providence Hospital (Respondent) v. Group of Employees (Objectors).

Unit #1: "all registered and graduate lay nurses employed by the respondent at its Hospital at Scarborough, Ontario in a nursing capacity, save and except persons above the rank of Supervisors, nurses employed for not more than twenty-four hours per week and persons covered by subsisting collective agreements." (17 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all registered and graduate lay nurses employed by the respondent at its Hospital at Scarborough, Ontario in a nursing capacity regularly employed for not more than twenty-four hours per week and except persons above the rank of Supervisor and persons covered by subsisting collective agreements." (15 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7145-74-R: Warehousemen and Miscellaneous Drivers, Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. The Toronto Humane Society (Respondent)  
- and -

7146-74-R: Warehousemen and Miscellaneous Drivers, Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. The Toronto Humane Society (Respondent)

Unit: "all shelter clerical and technical staff of the respondent in Metropolitan Toronto, save and except assistant shelter manager, persons above the rank of assistant shelter manager, secretary to the shelter manager, and students employed during the school vacation period." (28 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT

OF THE PARTIES THAT PERSONS CLASSIFIED AS ANIMAL CONTROL OFFICERS ARE INCLUDED IN THE BARGAINING UNIT.).

7155-74-R: Warehousemen and Miscellaneous Drivers, Local Union no. 419, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. N.C.R. Canada Ltd. (Respondent).

Unit: "all employees of the respondent at its warehouse located at 1490 Birchmount Road in Metropolitan Toronto, Ontario, save and except foremen, persons above the rank of foreman, office, clerical, technical, and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (6 employees in the unit). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THAT FIELD ENGINEERS ARE CONSIDERED TO BE TECHNICAL EMPLOYEES.).

7157-74-R: Christian Labour Association of Canada (Applicant) v. Indian Bay Limited (Respondent).

Unit: "all plumbers and plumbers' apprentices in the employ of the respondent in the Townships of Strathearn, Panet, Cochrane, #32, Chapleau, Gallagher, #13G, #29 and #28 in the District of Sudbury, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING AND UPON AGREEMENT OF THE PARTIES).

7165-74-R: Brewery, Soft Drinks, Distillery, Distributors & Miscellaneous Workers, Local 1000 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Flavorite Poultry Limited (Respondent).

Unit: "all employees of the respondent at Hamilton, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students hired during the school vacation period." (87 employees in the unit).

7175-74-R: International Beverage Dispensers' and Bartenders' Union, Local 280 of The Hotel and Restaurant Employees' and Bartenders' International Union A.F.L.-C.I.O.-C.L.C. (Applicant) v. Avion Hotel Limited (Respondent).

Unit: "all full-time and part-time tapmen, bartenders, beverage waiters male and female, barboys and improvers in the employment of the respondent at the Avion Hotel Limited at 434 Gerrard Street East in the City of Toronto, Ontario, save and except manager and those above the rank of manager." (8 employees in the unit).



7182-74-R: Ontario Nurses' Association (Applicant) v. The McCausland Hospital (Respondent).

Unit: "all registered and graduate nurses employed in a nursing capacity by the respondent at Terrace Bay, save and except the director of nursing and persons above the rank of director of nursing." (17 employees in the unit).

7183-74-R: Ontario Nurses' Association (Applicant) v. Our Lady of Mercy Hospital (Respondent).

Unit #1: "all lay registered and graduate nurses employed in a nursing capacity by the respondent at Toronto, save and except head nurses, persons above the rank of head nurse, and persons regularly employed for not more than 24 hours per week." (88 employees in the unit).

Unit #2: "all lay registered and graduate nurses regularly employed for not more than 24 hours per week in a nursing capacity by the respondent at Toronto, save and except head nurses and persons above the rank of head nurse ." (2 employees in the unit).

7191-74-R: Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Steinberg's Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

7192-74-R: Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. E. J. Wright Central Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

7200-74-R: Service Employees International Union, Local 532 (Applicant) v. Victoria Nursing Home (Respondent).

Unit: "all employees of the respondent at Hamilton, save and except professional Nursing Staff, Supervisors, Foremen, persons above the rank of Supervisor or Foreman, Office Staff, persons regularly employed for not more than twenty four hours per week, and students employed during the school vacation period." (31 employees in the unit). (HAVING REGARDS TO THE AGREEMENT OF THE PARTIES).

7201-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Avena Investments Limited (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance in Metropolitan Toronto, save and except resident managers and persons above the rank of resident manager, office and clerical staff." (3 employees in the unit). (BY AGREEMENT OF THE PARTIES).

7203-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. A. & C. Khan Janitorial Services Limited (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at Huntingwood Place Apartments, Toronto, save and except Property Managers, persons above the rank of Property Manager, office and clerical staff." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7204-74-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Dave I.G.A. Foodliner (Respondent).

Unit: "all employees of the respondent at Timmins who are regularly employed for not more than twenty-four hours per week, save and except assistant store managers and persons above the rank of assistant store manager and office staff." (23 employees in the unit).

7210-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. George Therien Construction Ltd. (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

7213-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of O'Connor (Respondent).

Unit: "all employees of the respondent, save and except foremen, persons above the rank of foreman, office, clerical and technical employees and students employed during the school vacation period." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7214-74-R: United Textiles Workers of America (Applicant) v. Malibu Fabrics of Canada Ltd. (Respondent).

Unit: "all employees of the respondent at their plant in Smith Falls, Ontario, save and except chief engineer, foremen, persons above the

rank of foreman, office and clerical staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (34 employees in the unit).  
(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7215-74-R: Labourers' International Union of North America, Local 527 (Applicant) v. Liquid Carbonic Canada Limited Limitee (Respondent).

Unit: "all employees of the respondent at its Victor Assembly in Cornwall, save and except managers, persons above the rank of manager, salesmen, office staff and persons regularly employed for not more than twenty-four hours a week." (12 employees in the unit).

7216-74-R: Retail Clerks Union, Local 486 (Applicant) v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of the respondent at Arnprior, save and except store manager and persons above the rank of store manager." (10 employees in the unit).

7217-74-R: Retail Clerks Union, Local 486 (Applicant) v. Woodhouse Limited (Respondent).

Unit: "all employees of the respondent at Pembroke, save and except store manager and persons above the rank of store manager." (6 employees in the unit).

7218-74-R: United Steel Workers of America (Applicant) v. Bonar & Bemis Limited (Respondent).

Unit: "all employees of the respondent in its plastics division in Burlington, save and except foremen, persons above the rank of foreman, office and sales staff." (135 employees in the unit).

7220-74-R: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Local #128 (Applicant) v. Great Lakes Fabricating (Respondent).

Unit: "all employees of the respondent company situated in London, Ontario, save and except foremen, those above the rank of foreman and office staff." (7 employees in the unit).

7224-74-R: Canadian Union of Public Employees (Applicant) v. Corporation of the Township of Brantford (Respondent).

Unit: "all outside employees of the respondent, save and except superintendents, persons above the rank of superintendent, office, clerical and technical personnel, students employed during the school vacation



period, and persons regularly employed for not more than 24 hours per week." (11 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7230-74-R: United Steelworkers of America (Applicant) v. Northeast Tool & Die Works Ltd. (Respondent).

Unit: "all employees of the respondent in Windsor, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff." (28 employees in the unit).

7237-74-R: Warehousemen and Miscellaneous Drivers, Local No. 419, Affiliated with the International Brotherhood of Teamsters Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Encyclopaedia Britannica Publications Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at its Warehouse in Metropolitan Toronto save and except supervisors and persons above the rank of supervisor and office staff." (7 employees in the unit).

7239-74-R: The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Robertson Building Systems Ltd. Robertson Contracting Division (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (THE BOARD WAS NOT PREPARED TO FIND ON THE BASIS OF THE MATERIAL BEFORE IT THAT THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION HAS AN INTEREST IN THIS PROCEEDING. THE BOARD NOTES THAT THE APPLICANT IN THE INSTANT APPLICATION IS NOT THE SAME AS THE RESPONDENT IN THE BOARD'S FILE NUMBER 1322-71-R.).

7241-74-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Dustbane Enterprises Limited (Respondent).

Unit: "all employees of the respondent in its Modern Building Cleaning Division at the Middlesex County Court House in London, save and except supervisors, persons above the rank of supervisor and office staff." (24 employees in the unit).

7242-74-R: Retail Clerks Union, Local 486 (Applicant) v. Great Universal Stores of Canada Limited (Respondent).

Unit: "all employees of the respondent at Cornwall, Ontario, save and except Store Manager and persons above the rank of Store Manager." (10 employees in the unit).

7244-74-R: Service Employees International Union, Local 532 (Applicant) v. Victoria Nursing Home (Respondent).

Unit: "all employees of the respondent at Hamilton who are regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except professional nursing staff, supervisors, foremen, persons above the rank of supervisor or foreman, and office staff." (10 employees in the unit).

7254-74-R: Canadian Union of Public Employees (Applicant) v. Regional Municipality of Peel (Respondent).

Unit: "all employees of the respondent at the Peel Manor Nursing Home regularly employed for not more than 24 hours per week, save and except supervisors, persons above the rank of supervisor, registered nurses, graduate nursing staff, head housekeeper, adjuvant, nursing supervisors, technical personnel, office staff, and students employed during the school vacation period." (12 employees in the unit).

7256-74-R: Ontario Nurses' Association (Applicant) v. Carefree Lodge (Respondent).

Unit #1: "all registered and graduate nurses engaged in a nursing care capacity employed by the respondent in the borough of North York, save and except the director of nursing, persons above the rank of director of nursing and persons regularly employed for not more than twenty-four hours per week." (2 employees in the unit). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

Unit #2: "all registered and graduate nurses engaged in a nursing capacity who are regularly employed by the respondent in the borough of North York for not more than twenty-four hours per week, save and except the director of nursing and persons above the rank of director of nursing." (9 employees in the unit).

7263-74-R: Retail Clerks Union, Local 486 (Applicant) v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of the respondent at Kingston, Ontario save and except store manager and persons above the rank of store manager." (3 employees in the unit).

7268-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Alnor Earthmoving Limited (Respondent).

Unit: "all employees of the respondent in the County of Lambton engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

7277-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Alnor Earthmoving Limited (Respondent).

Unit: "all employees of the respondent in the County of Lambton employed as instrumentmen, rodmen, chairmen and Party Chief, save and except Field Engineer and persons above the rank of Field Engineer." (3 employees in the unit).

7285-74-R: Retail Clerks International Association (Applicant) v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of the respondent at Lindsay, Ontario, save and except store manager and persons above the rank of store manager." (4 employees in the unit).

7286-74-R: Retail Clerks International Association (Applicant) v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of the Respondent at Peterborough, Ontario, save and except store manager and persons above the rank of store manager." (5 employees in the unit).

7294-74-R: Retail Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Ernie's Signs Limited (Respondent).

Unit: "all employees of the respondent at Sudbury, Ontario, save and except foremen, persons above the rank of foreman, office, clerical and sales staff, and students employed during the school vacation period." (11 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

#### Applications Certified Subsequent to Pre-Hearing Vote

6752-74-R: Canadian Union of Operating Engineers (Applicant) v. St. Joseph's Hospital (Chatham) (Respondent) v. International Union of Operating Engineers, Local 772 (Intervener).

Unit: "all Stationary Engineers and their helpers in the employ of the respondent at Chatham, save and except the Chief Engineer and persons above the rank of Chief Engineer." (6 employees in the unit).



Number of names of persons on revised voters' list		7
Number of persons who cast ballots	7	
Number of ballots marked in favour of applicant	5	
Number of ballots marked in favour of intervener	2	

7092-74-R: Teamsters Local 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Walker Vacuum Services Ltd. (Respondent).

Unit: "all employees of the Respondent at and out of Welland, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff." (10 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		10
Number of persons who cast ballots	7	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	3	

7135-74-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Canadian General Electric Company Limited (Respondent).

Unit: "all consumer service technicians of the respondent working in and out of the respondent's premises at Peterborough, Ontario, save and except supervisors, persons above the rank of supervisor and office staff." (6 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list		6
Number of persons who cast ballots	6	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	0	

7231-74-R: United Steelworkers of America (Applicant) v. Jacuzzi Canada Limited (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office, sales and technical staff and students employed during the school vacation period." (148 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		145
Number of persons who cast ballots	139	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	75	
Number of ballots marked against of applicant	62	

Applications Certified Subsequent to Post-Hearing Vote

6546-74-R: The Canadian Union of Public Employees (Applicant) v. Oshawa General Hospital (Respondent) v. Ontario Nurses' Association (Intervener).

Unit #2: "all office and clerical employees of the respondent at Oshawa regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor, executive secretaries to the following: President, Executive Director, Director of Medical Services, Director of Finance, Director of Hospital Services, Director of Nursing; technical personnel, registered and graduate nurses, personnel staff, and employees covered by existing collective agreements between the respondent and The Canadian Union of Public Employees, Local 45; Nurses Association, Oshawa General Hospital; The Canadian Union of Operating Engineers; and The Civil Service Association of Ontario." (23 employees in the unit). (FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT THE TERM "TECHNICAL PERSONNEL" COM-  
PRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SPEECH THERAPISTS, BACTERIOLOGISTS, BIOCHEMISTS, VIROLOGISTS, GRADUATE DIETITIANS, UNDER-GRADUATE DIETITIANS, STUDENT DIETITIANS, PHOTOGRAPHER, METHODS ANALYST, PROFESSIONAL PSYCHIATRIC STAFF AND CLINICIANS, ELECTRO-ENCEPHALOGRA-  
PHISTS, ELECTRIC SHOCK THERAPISTS, LABORATORY RADIOLOGICAL, PATHOLO-  
GICAL, ELECTRO-CARDIOLOGICAL AND RESPIRATORY TECHNOLOGISTS, GRADUATE RECORD TECHNICIANS.).

Number of names of persons on revised voters' list		61
Number of persons who cast ballots	40	
Ballots segregated and not counted	4	
Number of ballots marked in favour of applicant	34	
Number of ballots marked against applicant	2	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CON-  
DUCTED).

6939-74-R: United Cement, Lime and Gypsum Workers International Union, A.F.L. C.I.O., C.L.C. (Applicant) v. Sunshine Uniform and Supply Co. Limited (Respondent) v. Laundry, Dry Cleaning & Dye House Workers' International Union, Local 351 (Intervener) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Belleville, save and except supervisors, persons above the rank of supervisor, office and sales staff and students employed during the school vacation period." (8 employees in the unit).

Number of names of persons on voters' list		8
Number of persons who cast ballots	8	
Number of ballots marked in favour of applicant	7	
Number of ballots marked in favour of intervener	1	
Number of ballots marked in favour of no trade union	0	

7016-74-R: Retail Clerks International Association (Applicant) v. S. J. Pilat Limited Mount Royal I.G.A. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Burlington, Ontario, save and except Store Managers, Assistant Store Manager and persons above the rank of Assistant Store Manager." (24 employees in the unit).

Number of names of persons on revised voters' list		26
Number of persons who cast ballots	26	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	13	
Number of ballots marked against applicant	12	

7091-74-R: Canadian Union of Public Employees (Applicant) v. The Regional Municipality of Waterloo (Respondent) v. London & District Building Service Workers' Union, Local 220 S.E.I.U., A.F.L., C.I.O., C.L.C. (Intervener).

Unit: "all office, clerical and technical employees of the respondent, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week, students employed during the school vacation periods or work terms and persons employed at Sunnyside Home for the Ages, Kitchener." (252 employees



in the unit). (...THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS LIBRARY ASSISTANT SUPERVISOR, LIBRARY JUNIOR SECRETARY, LIBRARY CLERK AND LIBRARY ASSISTANTS BE PERMITTED TO VOTE AND THEIR BALLOTS BE SEGREGATED PENDING A FURTHER DETERMINATION BY THE BOARD ON THE COMMUNITY OF INTEREST OF THESE EMPLOYEES WITH OTHER EMPLOYEES IN THE AGREED BARGAINING UNIT, AND THE BOARD SO DIRECTS.).

Number of names of persons on voters' list		148
Number of persons who cast ballots	122	
Ballots segregated and not counted	2	
Number of ballots marked in favour of applicant	97	
Number of ballots marked against applicant	23	

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING FEBRUARY

##### No Vote Conducted

3336-72-R: Toronto Newspaper Guild, Local 87 (Applicant) v. Preston and Sons Limited (Respondent). (21 employees).

7109-74-R: Labourers' International Union of North America Local 1081 (Applicant) v. E. & E. Seegmiller Limited, Galt Sand & Gravel Co. Ltd. (Respondents). (4 employees).

7148-74-R: Canadian Union of Public Employees (Applicant) v. Muskoka-Parry Sound Health Unit (Respondent). (1 employee).

7166-74-R: United Brotherhood of Carpenters and Joiners of America Local 2307 (Applicant) v. Simard Construction Materials (Respondent). (40 employees).

7211-74-R: Labourers International Union of North America Local Union #493 (Applicant) v. Internorth Construction Limited (Respondent). (2 employees).

7234-74-R: Grand River Valley District Council of The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Loblaws Groceries Co. Limited (Respondent). (4 employees).

7278-74-R: Labourers International Union of North America Local 607 (Applicant) v. Loblaws Limited (Construction Division) (Respondent). (2 employees).

7317-74-R: Grand River Valley District Council, of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Cloke Construction Company Limited (Respondent). (2 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

7046-74-R: Association of Commercial & Technical Employees Local 1704, C. L. C. (Applicant) v. Kroehler Mfg. Co. Limited (Respondent) v. Upholsterers' International Union, Local 199 (Intervener).

Voting Constituency: "All officer, Clerical and Technical Employees of the Respondent In Stratford, Ontario save and except Department Managers, Foremen persons above the rank of Department Manager and Foreman, Secretary to the President, Payroll Department, Sales Office Staff, Outside Sales Staff, Payroll Auditor, Personnel Supervisor, Superintendent of Quality Control, Chief Engineer, Inspectors, Registered Nurse and persons covered by an existing collective agreement between the Respondent and Upholsterers International Union Local 199." (94 employees). (THE BOARD FURTHER DIRECTED THAT SHOULD ANY OF THE EMPLOYEES IN THE RESPONDENT'S PAYROLL DEPARTMENT OR IN ITS SALES OFFICE STAFF PRESENT THEMSELVES AT THE POLLING STATION, THEY SHALL BE PERMITTED TO VOTE AND THEIR BALLOTS SHALL BE SEGREGATED AND NOT COUNTED PENDING A RULING BY THE BOARD CONCERNING THEIR ELIGIBILITY FOR INCLUSION IN THE VOTING CONSTITUENCY.). (THE BOARD FURTHER DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING FURTHER DIRECTION BY THE BOARD.).

Number of names of persons on revised voters' list		66
Number of persons who cast ballots	66	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	21	
Number of ballots marked against applicant	44	

7066-74-R: International Union, United Plant Guard Workers of America Local 1962 (Applicant) v. General Motors of Canada Limited, South Plant, Oshawa, Ont. (Respondent).

Voting Constituency: "All security guards (plant protection) protecting the property of General Motors of Canada Limited at Oshawa in the regional municipality of Durham, save and except sergeants, receptionists, chauffeurs and students employed during the school vacation period." (106 employees). (THE BOARD DIRECTED THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE BE SEALED AND THE BALLOTS NOT COUNTED PENDING FURTHER DIRECTION BY THE BOARD.).

Number of names of persons on voters' list		64
Number of persons who cast ballots	63	
Number of ballots marked in favour of applicant	31	
Number of ballots marked against applicant	32	

7101-74-R: Boot and Shoe Worker's Union: CLC, AFL-CIO (Applicant)  
v. Trimfoot Company Limited (Respondent).

Voting Constituency: "All employees of the respondent at Mt. Forest save and except foreman, foreladies, persons above the rank of foreman and forelady, office and sales staff, students employed during the school vacation period and persons regularly employed for not more than twenty-four hours per week." (51 employees).

Number of names of persons on revised voters list		52
Number of persons who cast ballots	48	
Number of ballots marked in favour of applicant	11	
Number of ballots marked against applicant	37	

#### Certification Dismissed Subsequent to Post-Hearing Vote

6528-74-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Erie Technological Products of Canada, Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent company in Trenton, save and except supervisors, persons above the rank of supervisor, office, sales and technical staff." (464 employees in the unit). (THE BOARD RULED THAT, AS THE BOARD IS CONDUCTING ITS INQUIRY INTO THE ALLEGATIONS, A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT BUT THAT THE BALLOT BOX WILL BE SEALED PENDING BOTH THE BOARD'S INQUIRY IN THIS MATTER AND ANY SUBSEQUENT HEARING THAT IS NECESSARY.).

Number of names of persons on revised voters' list		413
Number of persons who cast ballots	385	
Ballots segregated and not counted	7	
Number of spoiled ballots	4	
Number of ballots marked in favour of applicant	167	
Number of ballots marked against applicant	207	



APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING FEBRUARY

4830-73-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Delzotto Enterprises Limited (Respondent). (3 employees).

7126-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ellis-Don Ltd. (Respondent). (3 employees).

7212-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Kenricia Hotel Zeal and Gold (Respondents). (3 employees).

7218-74-R: United Steelworkers of America (Applicant) v. Bonar & Bemis Limited Plastic Division (Respondent) v. Canadian Paperworkers Union (Intervener). (135 employees).

7233-74-R: Canadian Paperworkers Union (Applicant) v. Bonar & Bemis Limited, Plastic Division (Respondent). (120 employees).

7235-74-R: Office and Professional Employees International Union (Applicant) v. Canadian Westinghouse Employees (Hamilton Works) Credit Union Limited of Hamilton (Respondent). (19 employees).

7238-74-R: Canadian Workers Union (Applicant) v. Harbour Castle Hotel, A Division of Campeau Corporation Ltd. (Respondent) v. Hotel & Club Employees' Union, Local No. 299 (Intervener). (2 employees).

7292-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. George Wimpey Canada Limited (Respondent). (9 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

OF DURING FEBRUARY

6914-74-R: Robert William Harloff (Applicant) v. Teamsters Local 879, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Respondent) v. Perth Concrete Products Limited (Intervener). (GRANTED).

Unit: "all employees of Perth Concrete Products Limited in Stratford and St. Mary's save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (12 employees in the unit).

Number of names of Persons on voters list	17
Number of persons who cast ballots	14
Number of ballots marked in favour of Respondent	4
Number of ballots marked against Respondent	10

7035-74-R: Ross Scolaro (Applicant) v. Canadian Food and Allied Workers, and Local Unions 175 and 633, chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, CLC (Respondent) v. Darrigo's Supermarkets Limited (Intervener). (67 employees). (GRANTED).

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7060-74-R: Joseph Welt (Applicant) v. Labourers' International Union of North America, Local 247 (Respondent) v. Kingston Dodge Chrysler (1963) Ltd. (Intervener). (24 employees). (GRANTED).

7178-74-R: Ferrington Fabricators Limited (Applicant) v. Shopmens Local Union No. 734 of the International Association of Bridge, Structural and Ornamental Iron Workers (Respondent). (5 employees). (GRANTED).

7189-74-R: Employees of Queen's Hotel (Applicant) v. Hotel and Restaurant Employees and Bartenders International Union, Local 604 (Respondent). (20 employees). (DISMISSED).

#### APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

##### FEBRUARY

7151-74-R: Ontario Nurses' Association (Applicant) v. Oshawa General Hospital (Respondent Employer) v. Nurses' Association Oshawa General Hospital (Predecessor Trade Union). (GRANTED).

7169-74-R: Local 1590, International Brotherhood of Electrical Workers (Applicant) v. Stark Industrial Electronics Limited (Respondent). (GRANTED).

7173-74-R: International Brotherhood of Electrical Workers, Local 556 (Applicant) v. The Hydro Electric Commission of Niagara Falls (Respondent) v. Local Union 1375 of the International Brotherhood of Electrical Workers (Predecessor Trade Union). (GRANTED).

7174-74-R: International Brotherhood of Electrical Workers, Local 556 (Applicant) v. Chippawa Public Utility Commission (Respondent)

Local Union 1375 of the International Brotherhood of Electrical Workers (Predecessor Trade Union). (GRANTED).

7206-74-R: Ontario Nurses' Association (Applicant) v. Board of Health Elgin-St. Thomas Health Unit (Respondent). (GRANTED).

7207-74-R: Ontario Nurses' Association (Applicant) v. Women's College Hospital (Respondent) v. Nurses' Association Women's College Hospital (Predecessor Trade Union). (GRANTED).

7208-74-R: Ontario Nurses' Association (Applicant) v. Board of Health Haldimand-Norfolk Health Unit (Respondent). (GRANTED).

7225-74-R: Ontario Nurses' Association (Applicant) v. Sunnybrook Hospital (Respondent). (GRANTED).

7226-74-R: Ontario Nurses' Association (Applicant) v. The Board of Health of the St. Lawrence and Ottawa Valleys Health Unit (Respondent) v. Nurses' Association St. Lawrence and Ottawa Valleys Health Unit (Predecessor Trade Union). (GRANTED).

7308-74-R: Ontario Nurses' Association (Applicant) v. The Sault Ste. Marie and District Group Health Association (Respondent) v. Nurses' Association, The Sault Ste. Marie and District Group Health Association (Predecessor Trade Union). (GRANTED).

7309-74-R: Ontario Nurses' Association (Applicant) v. Joseph Brant Memorial Hospital (Respondent) v. The Nurses' Association, Joseph Brant Memorial Hospital (Predecessor Trade Union). (GRANTED).

#### APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

##### FEBRUARY

7172-74-U: Board of Governors of Lakehead University (also known as The Lakehead University) (Applicant) v. Ed Benka, et al (Respondents). (WITHDRAWN).

7180-74-U: Genwood Industries Limited (Applicant) v. Francine Piche, et al (Certain employees of the Applicant) (Respondents). (WITHDRAWN).

#### APPLICATIONS FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

##### FEBRUARY

6796-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent). (WITHDRAWN).



6805-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent). (WITHDRAWN).

6806-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent). (WITHDRAWN).

6807-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent). (WITHDRAWN).

#### APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING FEBRUARY

6208-74-U: Lumber and Sawmill Workers' Union, Local 2995, of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Elk Lake Planing Mill Limited and Peter Grant (Respondents). (WITHDRAWN).

6449-74-U: Canadian Union of Public Employees (Applicant) v. Thunder Bay District Health Unit (Respondent). (DISMISSED).

7034-74-U: Administrative and Technical Staff Union (Applicant) v. Canadian Union of Public Employees (Respondent). (WITHDRAWN).

7042-74-U: The Canadian Workers Union (Applicant) v. The Burlington Golf and Country Club Ltd. (Respondent). (DISMISSED)..

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7171-74-U: Retail Clerks International Association, Local 409 (Applicant) v. D. H. Foods (Marathon) Ltd. (Respondent). (WITHDRAWN).

7209-74-U: Administrative and Technical Staff Union (Applicant) v. Canadian Union of Public Employees (Respondent). (WITHDRAWN).

7229-74-U: United Steelworkers of America (Applicant) v. Modular Architectural Components Limited (Respondent). (WITHDRAWN).

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7106-74-U: United Steelworkers of America (Complainant) v. Fielding Lumber Company Limited (Respondent).

- and -

7131-74-U: United Steelworkers of America (Complainant) v. Fielding Lumber Company Limited (Respondent). (GRANTED).

7123-74-U: Retail Clerks International Association (Complainant) v. Little Bros. (Weston) Limited (Respondent). (WITHDRAWN).

7130-74-U: Sharon Brenda Rae (Complainant) v. Textile Workers Union of America (Local 1575) & Fannings' Launderers and Dry Cleaners Limited (Respondents). (WITHDRAWN).

7153-74-U: Rafael Lopez (Complainant) v. U.A.W., Local 444 (Respondent) v. Chrysler Canada Ltd. (Intervener). (DISMISSED).

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7170-74-U: Office & Professional Employees International Union, Local 81 (Complainant) v. Canadian Car Division Hawker Siddeley Canada Ltd. (Respondent). (WITHDRAWN).

7197-74-U: Jean-Paul Turcotte (Complainant) v. Pioneer Manor (Respondent). (WITHDRAWN).

7219-74-U: Pietro Triolo (Complainant) v. Laborers' International Local 506 and Sandrin Precast Ltd. (Respondents). (DISMISSED).

7227-74-U: Eric Britnell (Complainant) v. International Union of Electrical Workers (IUE) Local 532 (Respondent). (WITHDRAWN).

7236-74-U: United Brotherhood of Carpenters Local 2307, 158 Pitt Street, Cornwall, Ontario (Complainant) v. Simard Construction Materials Longueuil L'Orignal, Ontario (Respondent). (WITHDRAWN).

7248-74-U: Mrs. Catherine A. Revenberg (Complainant) v. Mr. David Baker, Director of Personnel, Hotel Dieu Hospital, Windsor (Respondent). (WITHDRAWN).

7251-74-U: Lola Lafave (Complainant) v. United Papermakers Canadian Local 109 (Respondent). (TERMINATED).

7252-74-U: Louise Sabourin (Complainant) v. United Paperworkers Canadian Union Local 109 (Respondent). (TERMINATED).

7253-74-U: Irene Bernier (Complainant) v. United Papermakers Canadian Union Local 109 (Respondent). (TERMINATED).

7260-74-U: Shirley McQuillan (Complainant) v. Atlantic Packaging Co. (Respondent). (WITHDRAWN).

7274-74-U: Dora L. DeAdder (Complainant) v. Ferranti Packard Ltd. (Respondent). (WITHDRAWN).

7288-74-U: Leon Godfree (Complainant) v. Wm. Wilson - Chairman (Respondent). (WITHDRAWN).

7289-74-U: Giuseppe Moretti (Complainant) v. Atlantic Packaging Co. (Respondent). (WITHDRAWN).

7290-74-U: Sarina Marsala (Complainant) v. Atlantic Packaging Co. (Respondent). (WITHDRAWN).

7291-74-U: Ancelina Rondinella (Complainant) v. Atlantic Packaging Co. (Respondent). (WITHDRAWN).

7304-74-U: Ontario Nurses' Association (Complainant) v. Etobicoke General Hospital (Respondent). (WITHDRAWN).

7310-74-U: International Leather Goods, Plastics and Novelty Workers' Union, Local 8 C.L.C.-Toronto (Complainant) v. Elan Traders (Respondent). (WITHDRAWN).

7356-74-U: Antonio Paleschi (Complainant) v. Frank Amis, Andrew Haluska, Zigmunt Jedrasik (Respondents). (WITHDRAWN).

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7222-74-M: Service Employees Union, Local 204, A.F.L.-C.I.O.-C.L.C. (Trade Union) v. Modern Building Cleaning, Division of Dustbane Enterprises Limited (Employer). (GRANTED).

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- and -

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5873-74-R: Local 598 of the Operative Plasterers' and Cement Masons' International Association of the United States and Canada (Applicant) v. Ontario Hydro (Respondent) v. Ontario Hydro Employees' Union Local 1000 (Intervener #1) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local Union No. 915 (Intervener #2) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local Union No. 172 (Intervener #3) v. Operative Plasterers' and Cement Masons' International Association Local Union 124, Ottawa (Intervener #4) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local Union No. 162 (Intervener #5). (REQUEST DENIED).

6066-74-R: Marble Masons Tile Layers and Terrazzo Workers Union No. 31 (Applicant) v. A.V. Hallam Lathing and Plastering Ltd. (Respondent) v. Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 48 (Intervener #1) v. Local Union 1747, United Brotherhood of Carpenters and Joiners of America (Intervener #2) v. Operative Plasterers and Cement Masons International Association of The United States and Canada, Local Union No. 124, Ottawa (Intervener #3). (REQUEST DENIED).

6528-74-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Erie Technological Products of Canada, Limited (Respondent) v. Group of Employees (Objectors). (REQUEST DENIED).

6894-74-R: Labourers International Union of North America Local 837 (Applicant) v. City Paving Co. Limited (Respondent). (REQUEST DENIED).

7019-74-R: Retail Clerks Union, Local 486 (Applicant) v. Ottawa Beef Company Limited (Respondent) v. Group of Employees (Objectors). (REQUEST DENIED).

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7035-74-R: Ross Scolaro (Applicant) v. Canadian Food and Allied Workers, and Local Unions 175 and 633, chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, CLC (Respondent) v. Darrigo's Supermarkets Limited (Intervener). (REQUEST DENIED).

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the date of transfer into the new trade. The Board is satisfied on the evidence presented by the respondent that the foregoing indicates a true picture of the customary application of past practice to seniority in the skilled trades.

6. The evidence is that at one period the complainant was credited with seniority in two skilled trades classifications. This fact, according to the uncontradicted evidence heard by the Board, was the result of an error on the part of the intervener. This was discovered as the result of an attempt by the complainant to have an adjustment made to his seniority on the basis of his claim that he had lost a month's seniority when he moved from the one skilled trade classification to the other. The result of this incident was that his seniority in his present classification was corrected and set at September 26, 1969, that being the date of his entry into the Layout - Metal and Wood Inspector classification, and his seniority in the previous classification was cancelled altogether.

7. The uncontradicted evidence of the respondent further establishes that the terms of the collective agreement and the past practices with respect to skilled trades seniority were also applied in the same manner and at the same time the correction was made in the seniority of the complainant with respect to two other tradesmen whose seniority had been incorrectly recorded. Their seniority was similarly reduced to the date of their transfer from a previous skilled classification into a new skilled trades classification. It is clear, therefore, that the complainant was treated in no way that was different from the treatment accorded to the other employees found to be in a similar situation with respect to their seniority. The evidence also established that the journeymen referred to in the complaint who were retained in employment had, in fact, more seniority than the complainant.

8. The past practices referred to by the complainant are not set out in the current collective agreement which was filed with the Board but were established to the satisfaction of the Board by the evidence adduced by the respondent. The Board is satisfied that the terms of the agreement and the past practices were applied to the case of the respondent in a manner that was neither arbitrary, discriminatory nor in bad faith but, rather, were, in fact, applied in precisely the same way to the complainant as to the other employees referred to above.

9. The application is accordingly dismissed.

7177-74-R: Bakery & Confectionary Workers' International Union of America, Local 426 (Applicant) v. CHRISTIE, BROWN & COMPANY LIMITED (Respondent) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Intervener).

BEFORE: D. D. Carter, Vice-Chairman, and Board Members E. Boyer and J. E. C. Robinson, Q.C.

APPEARANCES AT THE HEARING: M. Zimmerman for the applicant; R. N. Gilmore for the respondent; H.F. Caley for the intervener.

DECISION OF D. D. CARTER, VICE-CHAIRMAN, AND BOARD MEMBER J. E. C. ROBINSON, Q.C.: March 4, 1975.

. . .

2. The applicant is applying for representation rights in respect of certain employees of the respondent at its depot in Mississauga. The following bargaining unit was proposed by the applicant.

"Employees at the Respondent's Depot at 1775 Sismet Drive, Mississauga, Ontario, save and except foremen and foreladies and those above this rank, office staff and drivers."

3. Both the respondent and the intervener submitted that, since this bargaining unit included only warehouse workers, it was an inappropriate unit for collective bargaining. The appropriate unit, it was argued, was one comprising both warehouse employees and drivers.

4. It is necessary to set out some of the background of this application before making a determination as to the appropriate bargaining unit. Both the applicant and the intervener represent employees of the respondent at its production plant in Metropolitan Toronto, Local 426 representing the production and warehouse workers and Local 647 representing the drivers, representation rights being demarcated by the distinction between inside workers and outside workers. Recently, the respondent moved part of its operations from the production plant, establishing a depot at Mississauga. The Mississauga depot was staffed by moving from the production plant to the new location 20 warehousemen formerly represented by Local 426 and 20 drivers formerly represented by Local 647.

5. The applicant argued that, since the 20 warehouse employees had bargained separately from the drivers prior to their transfer, they should continue to bargain separately at the new location. The Board is aware that previous patterns of organization may define

the extent of community of interest among employees. If employees have traditionally bargained separate and apart from each other, then combining such groups in an all-employee unit might place excessive strains upon the collective bargaining process. In this type of situation the Board may recognize the distinct communities of interest by providing a bargaining unit for each of the employee groups.

6. In the instant case, however, the Board is not convinced that distinct communities of interest have been created by a previous pattern of organization. For one thing, the warehouse employees did not by themselves comprise a bargaining unit but, rather, were part of a larger unit including production employees. The applicant, by proposing a bargaining unit of warehouse employees only, is proposing more than just a continuation of an existing pattern of organization. There is in this case a new situation to which the previous pattern of organization does not fit. This raises doubts as to whether the warehouse employees do have a community of interest separate from the drivers. Further doubts are raised by the fact that, on previous occasions, the Board has certified bargaining units comprising both warehousemen and drivers.

7. The argument against the bargaining unit proposed by the applicant is that it would have the effect of fragmenting the employees into two bargaining units, one for warehouse employees and one for drivers. The Board has recognized that there are dangers inherent in fragmentation. A proliferation of bargaining units may give rise to unhealthy competition among employer groups for both remuneration and job jurisdiction. The Board, because of these dangers, has required some good justification for separate bargaining units.

8. In the instant case, the Board does not consider that the applicant has provided sufficient justification for a separate bargaining unit of warehouse employees. Accordingly, the Board does not consider the bargaining unit proposed by the applicant as being appropriate.

9. The application is dismissed.

DECISION OF BOARD MEMBER E. BOYER: March 4, 1975.

I dissent.

Having regard to all the facts in this case and the previous representation of the warehouse people by the applicant. I would have directed a vote between the applicant and the Intervener for:



"Employees at the Respondent's Depot at 1775 Sismet Drive, Mississauga, Ontario, save and except foremen and foreladies and those above this rank, office staff and drivers."

7045-74-R: The International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. THE FRID CONSTRUCTION COMPANY, LIMITED (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener #1) v. Labourers International Union of North America, Local 837 (Intervener #2).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: Kenneth Childs and Frank Murphy appearing for the applicant; E. H. George and F. B. Reaume appearing for the respondent; H. A. Herron appearing for intervener #1; A. M. Minsky and E. H. Mancinelli appearing for intervener #2.

DECISION OF THE BOARD: March 4, 1975.

. . .

3. The Board further finds that this is an application for certification within the meaning of section 108 of The Labour Relations Act.

4. The applicant is seeking certification on behalf of a bargaining unit of employees described as "all of the rodmen of the employer that work on field fabrication, handling, racking, sorting, cutting, bending, hoisting, placing, burning, welding, and tying of all materials used to reinforce concrete construction - geographical board area (26)".

5. Intervener #1 appeared at the hearing in order to protect its bargaining rights with the respondent and was particularly concerned over the inclusion of the word "hoisting" in the proposed bargaining unit. After considering the representations of the parties, the Board announced that in the event that it determined an appropriate bargaining unit, the description of such bargaining unit would adequately protect the undisputed bargaining rights of intervener #1. Thereupon intervener #1 withdrew from this proceeding by leave of the Board.

6. The employees who are affected by this application may be referred to as rodmen and labour-rodmen. The rodmen who are members of the applicant have been supplied to the respondent by the applicant. The labour-rodmen are members of intervener #2.

7. Intervener #2 opposed this application on several grounds. Firstly, on the ground that the employees affected by this application are covered by a collective agreement between The Hamilton Construction Association and intervener #2 which was entered into on May 1, 1973, and which remains effect until April 30, 1975. Since this application was filed on December 9, 1974, intervener #2 argues that this application is untimely having regard to the provisions of section 5(4) of The Labour Relations Act. Secondly, intervener #2 argues that a unit of reinforcing rodmen is not an appropriate bargaining unit under section 6(2) of The Labour Relations because the reinforcing rodmen are not a distinguishable craft. Intervener #2 argues that in the event the collective agreement is not a bar to this application by virtue of its argument concerning section 6(2), the appropriate bargaining unit is an all employee unit under section 6(1) of The Labour Relations Act. Thirdly, intervener #2 argues that because it obtained bargaining rights in a certificate issued by the Board in 1955 for reinforcing rodmen and since these bargaining rights have not been terminated, the Board ought to direct a representation vote.

8. The respondent considers itself bound by the certificate of the Board which was issued in 1955 and stated that in using "labourers" in its labour relations with intervener #2 it means to include "rodmen".

9. The applicant rejected the arguments of intervener #2 and the respondent and argued that reinforcing rodmen are an appropriate bargaining unit and that they are not covered by the collective agreement referred to in paragraph seven herein.

10. Intervener #2 called as witnesses, Edgar George, the vice-president of purchasing for the respondent; John Albanese, an employee of the respondent and Saverio (Sam) DeLuca the president and a business representative of the applicant.

11. Mr. George gave evidence that he has been associated with the respondent for some thirty-seven years and that the respondent's business is that of a general contractor. He informed the Board that approximately seventy to eighty employees are covered by the collective agreement referred to in paragraph seven herein. The witness identified this collective agreement and agreed that it was binding on the respondent. He testified that the respondent is a member of The Hamilton Construction Association and that this Association has bargained on behalf of the respondent for more than ten years.

12. The witness gave evidence that about twelve of the respondent's employees were engaged in rodwork on December 9, 1974. He added that these employees were numbered from 13 to 24 on the list of employees filed by the respondent, that they are members of the applicant and are covered by the collective agreement referred to in paragraph seven herein. Mr. George testified that these twelve men also performed rod

work prior to December 9, 1974 and that it has been the respondent's practice to use these men for rodwork since 1955.

13. Mr. George identified in evidence a certificate which was issued by the Board to intervener #2 on February 10, 1955. This certificate by its terms covers all construction labourers in the employ of the respondent for an area which may for convenience sake be referred to as the city of Hamilton and a surrounding area (hereinafter referred to as "Hamilton and surrounding area". The job-site affected by this application is within Hamilton and surrounding area. However, in the decision which accompanied this certificate the Board issued a clarity note which states:

For the purposes of clarity the Board declares that the cement finishers and re-inforcing rodmen are in the bargaining unit and that carpenters and bricklayers, and all employees of the respondent working in and out of Hamilton engaged in operating shovels, bulldozers and similar equipment are not included in the bargaining unit.

14. The witness agreed that since 1955 the respondent has employed construction labourers to tie and place its reinforcing steel. He informed the Board that the respondent and intervener #2 had been parties to a series of collective agreements since 1955 and that these collective agreements have been applied to persons who performed rodwork. Mr. George identified a welfare contributions list dated December 27, 1974 as being the list which indicates the respondents' remittances to intervener #2's welfare fund in accordance with articles 14 and 18 of the collective agreement referred to in paragraph seven herein.

15. The witness confirmed that at least four names which appear on this list correspond to names of persons which appear on the schedule "A" filed by the respondent and who are classified as "labour-rodmen". The Board has compared the list and the schedule and finds that ten of the twelve names which appear on the list also appear on the schedule. The Board notes that the list appears to contain a key which indicates whether the employee whose name appears on the list is a carpenter, a labourer or a cement finisher. Having regard to the key and the employees' numbers, it appears that all of the persons whose names appear on the list have been classified as labourers.

16. Mr. George testified that he believed that during September of 1974 the respondent hired members of the applicant to do rodwork



and that these rodmen worked along with the respondent's labour-rodmen. He was unable to say whether any collective agreements since 1955 had reflected therein the classification of rodman. The witness explained that rodmen are not noted in the collective agreement referred to in paragraph seven herein because such agreement covers other employers who do not place their own rods.

17. In cross-examination Mr. George confirmed that the labour-rodmen were engaged in placing and tying rods on the date of the making of this application but conceded that one of them might have been a supervisor. The witness informed the Board that the respondent's cement finishers are covered by their own collective agreement with the Hamilton Construction Association and that he did not know whether cement finishers had been mentioned in earlier collective agreements with Intervener #2. He explained that the respondent did not remit money to Intervener #2 towards the welfare fund on behalf of the rodmen who were supplied by the applicant because such rodmen were not members of intervener #2. When asked if the collective agreement referred to in paragraph seven herein covers reinforcing rodmen, Mr. George replied that he believes it covers men who are rodmen and members of intervener #2.

18. John Albanese gave evidence that he had worked for the respondent for the last twenty-five years. He stated that he had been a member of intervener #2 since 1955 and that he is not a member of any other trade union. The witness described himself as a rodman and added that he bends and ties rods. Mr. Albanese testified that he is covered by the collective agreement referred to in paragraph seven herein and that he pays membership dues to intervener #2. He gave evidence that he has done rodwork over the years for the respondent and that he is part of a crew which does labourers' work and that others in the crew pour cement, strip forms, dig ditches and break cement. The witness stated that the respondent was engaged in cement forming on the date of the making of this application and that there were between fifty and sixty in the crew. Mr. Albanese gave evidence that the crew works along with members of the carpenters' union and the ironworkers' union and that the members of the latter union were not doing anything different from the twelve labourers who were doing rodwork.

19. In cross-examination, the witness stated that his hourly rate is \$7.05 and that when "we work as rodmen we get paid as rodmen and when we work as labourers we get paid labourers' wages". Mr. Albanese agreed that Frank Ramelli is a foreman who "does not work" and "just gives instructions". In re-examination, the witness explained that the wages set by the respondent are for the different skills.

20. Mr. De Luca testified that he has been a member in good

standing of intervener #2 since 1957 and that he worked as an iron-worker for the respondent between 1951 and 1966 and that he did tying, bending and placing of rods for the respondent. He gave evidence that since 1954 ninety per cent of his work was tying, placing and laying rods. The witness identified file cards from intervener #2's records which indicated the payment of membership dues by some of its members who were working for the respondent on December 9, 1974, at the job-site which forms the subject matter of this application.

21. In cross-examination, the witness agreed that the eleven employees classified by the respondent as rodmen were sent to the respondent as rodmen. However, Mr. De Luca insisted that these rodmen had not been sent to the respondent as foremen and that Frank Ramelli, classified by the respondent as a labour-rodman, is a working foreman.

22. Counsel for intervener #2 conceded that the collective agreement referred to in paragraph seven herein does not cover either rodmen or rodwork. Counsel did maintain that this collective agreement is the successor of the earlier collective agreements which have existed over the years. Counsel argues that the present bargaining unit which is defined in the collective agreement referred to in paragraph seven herein reflects the unit granted by the Board to intervener #2 in 1955 and that the parties to the collective agreement have treated it as covering rodmen employed by the respondent. Counsel conceded while the respondent may have violated the collective agreement by securing rodmen from the applicant such conduct does not expunge the bargaining rights of intervener #2. Counsel repeated his argument that this application is not sustainable under section 6(2) of The Labour Relations Act and stated that because intervener #2 represents the ironworkers this application ought to have been brought under section 6(1) of the Act. Counsel's third argument is that at the very least there ought to be a representation vote with respect to reinforcing rodmen. Counsel reasoned that intervener #2 was awarded bargaining rights for reinforcing rodmen twenty years ago and that since the Board no longer may find abandonment of bargaining rights since the decision of the Ontario Court of Appeal in Shopmen's Local Union No. 743 of the International Association of Bridge Structural and Ornamental Iron Workers v. Brayshaws Steel Ltd. and United Steelworkers of America 71 CLLC ¶14,084; the Board ought to acknowledge the existence of outstanding bargaining rights with respect to reinforcing rodmen.

23. The respondent stated that since the certification in 1955 it had always considered that intervener #2 represented the reinforcing rodmen employed by the respondent in Hamilton and surrounding area and that it had acted accordingly. The applicant argued that

the collective agreement referred to in paragraph seven herein does not cover reinforcing rodmen and that reinforcing rodmen and cement finishers had over the years been negotiated out of collective agreements between the respondent and intervener #2. The applicant also argued that the fact that different rates were paid for labourers and rodmen indicates that rodmen are outside the provisions of the collective agreement referred to in paragraph seven herein. The applicant also challenged the list of "labour-rodmen" filed by the respondent and urged that it should be certified without a representation vote.

24. The collective agreement referred to in paragraph seven herein states in article 3.01 thereof that the employer recognizes the union as the sole and exclusive bargaining representative for all employees performing labour work within a geographic area which includes the job site affected by this application. This collective agreement does not by its terms refer to either reinforcing rodmen or to the tying, bending or placing of rods. The wage rates provided in article 24 of this collective agreement refer only to minimum rates. It is clear from the evidence that the respondent, on occasions, supplements this wage rate when the persons who are covered by this collective agreement perform work which require extra skills. This appears to be the case where construction labourers who are covered by this agreement perform the work of reinforcing rodmen. In our view, there is nothing in this collective agreement which indicates that reinforcing rodmen are covered therein.

25. It is true that in the certificate which was issued to intervener #2 on February 10, 1955 by the Board declared that cement finishers and reinforcing rodmen are included in a bargaining unit which referred to "all construction labourers". The evidence establishes that over the years, cement finishers are covered by a separate collective agreement. However, intervener #2 alleges that reinforcing rodmen are nonetheless covered by either the collective agreement or the certificate issued by the Board on February 10, 1955. It is unfortunate that the Board is unable to trace the pattern of collective agreement with respect to reinforcing rodmen from 1955 up to the collective agreement referred to in paragraph 7 herein. While intervener #2 and the respondent were able to supply the oldest and newest documents in a collective bargaining relationship that extends over twenty years, they were, most regrettably, unable to produce any documentary evidence to cover the intervening period of time. Moreover, neither the respondent nor intervener #2 were able to offer any real insight into the collective bargaining process in the intervening years.

26. It may well be that some ten years ago when the Hamilton Construction Association represented the respondent in its collective bargaining unit intervener #2 that a certain metamorphosis occurred



which brought intervener #2's bargaining relationship with the respondent in line with other members of the Hamilton Construction Association. The bargaining rights which were awarded to intervener #2 in 1955 by virtue of the Board's certificate clearly refer to reinforcing rodmen. However, the bargaining rights which are defined in a certificate may well be spent once the parties have entered into a collective agreement. After a certificate has been issued, the parties thereto frequently modify the terms of the certificate in defining the bargaining rights which are evidenced by a collective agreement. In the present application, it appears to the Board on the basis of the evidence before it that the respondent and intervener #2 have defined their collective bargaining relationship in terms of all employees performing labourers' work and that they have regarded the tying, binding and placing of rods to be part of a labourer's work. In the collective agreement referred to in paragraph 7 herein, there is nothing in article 4 thereof which relates to work jurisdiction which suggests that rodwork is regard as labourer's work. It may well be that the skills required to perform rod work are easily acquired by construction labourers and it appears that on this basis, the respondent has been agreeable to have its construction labourers perform rodwork.

27. It is one thing, however, for construction labourers to perform the work of reinforcing rodmen and another thing for such work to be covered by a collective agreement wherein intervener #2 represents all employees performing labourers' work. On all of the evidence before it, the Board finds that the collective agreement referred to in paragraph 7 herein neither covers reinforcing rodmen nor the work of tying, binding, or placing of rods.

28. There remains for consideration the question of whether intervener #2 currently holds bargaining rights for reinforcing rodmen quiet apart from the provisions of the collective agreement referred to in paragraph 7 herein. The Board has not terminated the bargaining rights of intervener #2 with respect to reinforcing rodmen and since the decision of the Ontario Court of Appeals which was referred to in paragraph 22 herein, there is some considerable doubt concerning whether the Board may find abandonment of bargaining rights in this application. In the result, the Board finds that intervener #2 still possesses bargaining rights for reinforcing rodmen within the geographic area defined in the certificate issued by the Board on February 10, 1955.

29. The Board further finds that all reinforcing rodmen in the employ of the respondent in the city of Hamilton and the suburban area adjacent thereto and lying within a line drawn as follows: commencing where the easterly limit of lot 21 in the Broken-front Concession in the Township of Saltfleet meets the high-water mark of the southerly shore of Lake Ontario, thence southerly along the

westerly limit of the road allowance between lots 20 and 21, across the Broken-front Concession and concessions 1 to 8, both inclusive, to the south-east angle of lot 21 in Concession 8 in the Township of Saltfleet, thence westerly along the northerly limit of the road allowance between the townships of Saltfleet and Pinbrock to the north-easterly limit of the road allowance between the townships of Saltfleet and Glanford, thence north-westerly along that limit to the northerly limit of the road allowance between the townships of Barton and Glanford, thence westerly along the last-mentioned limit to the south-west angle of lot 21 in Concession 8 in the Township of Barton, thence westerly along the northerly limit of the road allowance between concessions 3 and 4 in the Township of Ancaster to the south-west angle of lot 37 in Concession 3 in the Township of Ancaster thence northerly along the easterly limit of the road allowance between lots 36 and 37 in Concession 3 to the north-west angle of lot 37 in Concession 3, thence northerly along the production northerly of the westerly limit of lot 37 in Concession 3, across the road allowance between concessions 2 and 3 to the southerly limit of lot 36 in Concession 2, thence easterly along the northerly limit of the road allowance between concessions 2 and 3 to the south-west angle of lot 37 in Concession 2, thence northerly along the westerly limit of lot 37 across concessions 2 and 1 to the north-west angle of lot 37 in Concession 1 in the Township of Ancaster, thence northerly across the road allowance between the townships of Ancaster and West Flamborough to the south-west angle of lot 1 in Concession 1 in the Township of West Flamborough thence northerly along the easterly limit of the road allowance between the townships of Beverly and West Flamborough to the north-west angle of lot 1 in Concession 3 in the Township of West Flamborough thence easterly along the southerly limit of the road allowance between concessions 3 and 4 to the most northerly angle of lot 23 in Concession 3, thence south-easterly along the south-westerly limit of the road allowance between the townships of West Flamborough and East Flamborough to the production south-westerly of the north-westerly limit of Concession 3 in the Township of East Flamborough thence north-easterly along the production and north-westerly limit of Concession 3 to the line between the townships of East Flamborough and Nelson, thence south-easterly along the last mentioned line to the most westerly angle of lot 24 in Concession 1 south of Dundas Street in the Township of Nelson, thence north-easterly along the south-easterly limit of Dundas Street in the Township of Nelson to the most northerly angle of lot 11 in Concession 1 south of Dundas Street, thence south-easterly along the south-westerly limit of the road allowance between lots 10 and 11 in Concession 1 south of Dundas Street to the high-water mark on the north-westerly shore of Lake Ontario, thence south-westerly, southerly and south-easterly along the high water mark to the place of commencement, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

30. The applicant has challenged the list of employees which has been filed by the respondent. It matters not whether the applicant is correct in any or all of its challenges of "labour-rodmen" since it nevertheless has sufficient representation amongst "rodmen" standing alone or amongst "rodmen" and all or some of the "labour-rodmen" to participate in a representation vote. It would therefore serve no useful purpose at this time to delay the sequence of events of this application by appointing an Examiner prior to the taking of a representation vote.

31. The Board is satisfied on the basis of all the evidence before it that not less than thirty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the respondent on December 27, 1974, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of The Labour Relations Act, to be the time for the purposes of ascertaining membership under section 7(1) of the said Act.

32. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

33. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

34. The representation vote will be conducted and all persons who present themselves at the poll and who claim to be reinforcing rodmen will be issued with a ballot. Any person whose right to vote is challenged will be permitted to vote by means of a segregated ballot and such person will be examined on the nature of his work by Mr. N. J. Harper, Examiner. The Examiner will examine such persons and will report to the Board. In the event that segregated ballots are cast in this representation vote, the Examiner is directed to seal the ballot box pending a further ruling by the Board. In the event that segregated ballots are not cast in this representation vote, the Examiner may proceed to count the ballots which have been cast at the conclusion of the representation vote.

35. The matter is referred to the Registrar.

7164-74-R: Local Union 2345 International Brotherhood of Electrical Workers A.F.L. C.I.O. C.L.C. (Applicant) v. MITTEN INDUSTRIES GALT LIMITED (Respondent) v. Group of Employees (Objectors).



BEFORE: D. D. Carter, Vice-Chairman, and Board Members E. Boyer and J. E. C. Robinson, Q.C.

APPEARANCES AT THE HEARING: J. King for the applicant; R. B. Potter for the respondent; P. H. Sims for the objectors.

DECISION OF D.D. CARTER, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER:  
March 5, 1975.

. . .

2. The Board finds that all employees of the respondent at Cambridge (Galt), Ontario, save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than 24 hours per week, and students employed during school vacation periods constitute a unit of employees of the respondent appropriate for collective bargaining.

3. The Board finds that there were 55 employees in the bargaining unit at the time that the application was made. The applicant's evidence of membership indicates that 52 of these employees had joined the union. There are, however, 51 individual statements of desire filed with the Board, stating that the signing employee does not wish to be represented for collective bargaining purposes by the applicant. This means that there is a substantial overlap of those who have joined the union and those who have signed statements of desire, raising the question of whether at the terminal date the applicant enjoyed sufficient employee support to be certified without a vote.

4. When faced with employee statements of desire (or petitions) on other occasions, the Board has taken the position that it must be convinced on the balance of probabilities that these documents represent a voluntary expression of the true wishes of the employees that have signed them. The justification for placing the evidential onus upon those presenting petitions is the likelihood that employee changes of heart will be influenced primarily by the employer's attitude toward union organization, an attitude which may not be openly displayed until after the employer becomes aware of organizational activity. Given the economic power and supervisory authority of the employer, it is not difficult to understand that employees are likely to be highly susceptible to employer influences, either intended or unintended. Placing of the onus of proof upon petitioners recognizes that this kind of employee susceptibility must be taken into account when determining the extent of employee support enjoyed by a union.

5. Two employees, Margaret Montag and Horst Taschener, appeared at the hearing to testify as to the origination of the statements of desire. Mrs. Montag testified that she had been employed by the

company for six years, being currently employed as a shipper, a job not entailing supervision of other employees. She testified that she obtained copies of the appropriate form of statement of desire from a lawyer and, along with Mr. Taschener, collected employee signatures. She explained that she approached a lawyer to seek advice as to the procedure for filing evidence of employee opposition to the union, after being designated to perform this role by a group of employees. This designation occurred immediately after a meeting of employees convened by the employer on January 23. Late that afternoon she phoned the office of Mr. Sims and was told to come to the office the next day. The next morning she punched out at 8:30 in order to see the lawyer, giving the excuse that she had to have a foot X-rayed. Mrs. Montag further testified that, after obtaining the signatures of the employees, she returned the slips to the lawyer on Monday afternoon at 4:30 p.m. According to Mrs. Montag, the signatures were obtained on Friday after work, during the weekend at the homes of some of the employees, and on Monday at the plant.

6. Mr. Taschener testified that he had been employed by the company as a toolmaker since October, 1974, and that his job did not entail the supervision of other employees. He further testified that he obtained the individual statements of desire from Mrs. Montag, acquiring those slips by the 9:30 a.m. break on Friday, January 24. According to Mr. Taschener, he spoke to employees during the break period and during the lunch hour of the 24th, some of these employees signing statements, while others did not sign until the morning break period on the following Monday. Mr. Taschener indicated that he visited some employees at their home during the weekend, but employees approached in this manner did not sign until Monday at the plant.

7. The individual elements of this testimony must now be examined more carefully. Of considerable importance is the meeting of employees convened by the employer on Thursday, January 23, and attended by all employees. The meeting was convened at the Matador Tavern, located across the street from the company plant, commencing at around 3:30 p.m., just at the end of the first shift and just before the beginning of the night shift. At the meeting a statement was read by Mr. R.F. Mitten, the company president.

8. The first question is whether there is any connection between this meeting and the subsequent decision of employees to renounce the union. The evidence, in our opinion, establishes this connection. According to both Mrs. Montag and Mr. Taschener, immediately following the meeting, employees discussed how they might withdraw their support from the union, and these discussions resulted in a decision to contact a lawyer. There is no doubt that the petition followed hard on the heels of the meeting, leading

the Board to believe that the meeting was indeed the catalyst for the events that followed.

9. A second question, and a more fundamental one, is whether the meeting and the statements made at the meeting influenced the employees to such an extent that it cannot be said that the petition is an expression of their true wishes. The Board is aware that Section 56 of The Labour Relations Act provides that "nothing in this section shall be deemed to deprive an employer of the freedom to express his views so long as he does not use coercion, intimidation, threats, promises or undue influence." The issue in this case, however, is not whether the employer's conduct is in violation of s. 56 but, rather, whether the evidence contradicting the union membership evidence can be relied upon by the Board. It is quite possible that the employer's speech, although not unlawful, may still cast some doubt about the reliability of the employee petition. The Board here is only concerned with how employees may have been influenced by the speech, and not with the quality of the employer's conduct.

10. In answering this question, the Board must first examine the context in which the speech was made. The meeting at which the speech was given, although not held at the plant, was held at a time and place sufficiently proximate to have much the same effect as if the meeting were held on company premises. Employees either completing their shift or about to begin their shift might well regard attendance at the meeting as being a requirement of the job, even though not expressly ordered to attend and even though no payment was made for attending the meeting. The element of compulsion more clearly applies to the employees on the night shift, since the meeting extended into that shift. A night shift employee choosing not to attend the meeting faced the alternatives of not reporting to work as required or punching in to work on time and identifying himself as a person who did not wish to attend the employer's meeting. In these circumstances, the Board must conclude that it would be difficult for the employees and, especially those on the night shift, to choose not to attend the meeting.

11. The circumstances in which a meeting is convened are important in determining the impact of an employer speech upon employees attending that meeting. It is well known that the force of words depends upon the context in which they are made. If employees perceive that they are required to attend a meeting and listen to an employer speech, they may also perceive that they are required to adhere to the employer's views, either expressed or merely implied. Employer speeches are, therefore, much more likely to unduly influence employees where the employees form a captive audience or, as in this case, something closely resembling a captive audience.



12. The content of an employer speech is an equally important factor in determining its probable impact upon employees. Copies of the statement, printed in both English and Portuguese, were distributed to the employees at the meeting. The English version of the statement reads as follows:

"We would like to keep this meeting to 30 minutes because it is against the law to pay anyone to attend.

TO: ALL HOURLY RATED EMPLOYEES.

As you may know, The International Brotherhood of Electrical Workers has applied to the Ontario Labour Relations Board for certification as your bargaining agent. Any employer has an interest in the outcome of such an application and, in our case, because new management has recently rescued the company from near bankruptcy, we have a special interest in anything that affects our relations with employees.

Our goal is to work towards an outcome which reflects the true wishes of the majority of the employees affected. Both we and the union are forbidden by law from threatening, intimidating or discriminating against any employee to compel that employee to accept or refuse union membership. We intend to comply with the law to the fullest degree.

Regardless of how many employees, if any support the union or have signed union membership cards, the matter will not be settled until the Ontario Labour Relations Board has held a hearing. It is possible (and we hope that this will happen) that the Board may order a secret ballot vote to find out the true wishes of all employees. It is possible that one or more employees could decide to file an objection to oppose the union application as outlined in paragraphs 4 to 8 of the green sheet (Form 5) already posted on the bulletin boards.

You should be sensitive to pressure from all sources which may influence your decision. Whether or not you wish a union is your own personal decision. We hope that you will make your decision based on all the information available. We propose to provide you with current information about the financial prospects of the company and to answer questions about the union application or anything else at this meeting today.

I want to reinforce, neither the company nor the union

can promise you anything or threaten you in anyway. You may not know that this company had bankruptcy proceedings started in late April 1974. A hand written agreement between myself and the Ford Motor Company was thrashed out on a Friday afternoon in April. This agreement kept this company in business. If it had not been for this agreement the company would probably have closed May 1974.

At that time, I had to make certain committments, among them were

1. I had to personally guarantee the bank for money to operate.
2. I had to guarantee good business management to the bank, Ford Motor Company and the Steel Company of Canada (Stelco) I assured them that with the exception of a General Manager and someone to help in planning, we had supervision personnel and hourly rated employees who have the ability to produce quality parts on time, at a fair market price, realizing we had a lot of competition.

Since that time it was obvious a slow down was coming in the Automotive Industry. In order to protect our employees and this company, I purchased the Metal Division of Brassbestos Manufacturing Corporation, in Paterson, New Jersey, U.S.A. I also purchased Press #5, ahead of its need. This press and these dies do not belong to Mitten Industries.

What I am trying to tell you is that; I have tried to do everything in my power to keep the company going. I have probably made all kinds of mistakes, Everyone does, where these affected the employees adversely, I sincerely apologize. Now to get down to cases. Ask yourselves these questions.

1. Can a union guarantee you employment?
2. Will the union go out and try to drum up business or do you think the company will do this?
3. It is obvious the money that goes in your pay cheque comes from one source and one source only, Mitten Industries Customers.

#### Regarding Lay-Off's

The newspapers are full of it and even the U.A.W. has not been able to provide jobs. We are trying desperately

to get new business and maintain the present business for the good of our employees and our company. You have probably seen the Ads in the Cambridge newspaper. We have really blown the company's advertising budget. We hope the following will happen.

1. It will become well known in the Automotive Industry that Mitten Industries started this campaign and it should put us in an excellent position for new business

2. I should point out this was our idea. Fort Motor Company were told about it after the Ads were started. The Automotive Parts Manufacturing Association have copies of these Ads. Mr. Gillespie, the Minister of Trade and Commerce of Canada had a set of these delivered to him yesterday.

As I mentioned previously, we intend to comply with the law, to the fullest degree, with this in mind.

We cannot pay for your time at this meeting or promise you anything. I can only say that I will endeavour to treat everyone as fairly as is economically possible. However, you must consider that the union is obligated by law to make no promises either. You may have been told that you are the last to sign a card by the union, this may not be true. You may have been told by the union if you don't join now, you will have to join later, this again may not be true. You may have been told once signed, you cannot change your mind, this is not true, you certainly can change your mind.

Do we need outsiders that may not understand the problems that have beset this company, as mentioned earlier. O K! That's the case of my comments. Now Stu McLean and I are on the Hot Seat! Please don't be afraid to ask questions or make any suggestions. I only request, you speak one at a time and you may give your name and job in the plant if you want. This is your choice.

Now! Who is first?

R.F. Mitten  
President"

13. There are parts of this statement that may have influenced employees into signing the petition. The following statements are contained in the third paragraph:



"Regardless of how many employees, if any, support the union or have signed union membership cards, the matter will not be settled until the Ontario Labour Relations Board has held a hearing. It is possible (and we hope that this will happen) that the Board may order a secret ballot vote to find out the true wishes of all employees. It is possible that one or more employees could decide to file an objection to oppose the union application as outlined in paragraphs 4 to 8 of the green sheet (Form 5) already posted on the bulletin boards."

These remarks contain not only a clear indication of the employer's desire that a vote be held, but they also contain a not too subtle suggestion that this be made possible by an employee petition. Given the responsive nature of the employer-employee relationship, it is quite possible that in the minds of the employees these remarks might assume a certain imperative character. The impact of these remarks is heightened, rather than dispelled, by the statements that follow, especially by those contained in the next paragraph:

"You should be sensitive to pressure from all sources which may influence your decision. Whether or not you wish a union is your own personal decision. We hope that you will make your decision based on all the information available. We propose to provide you with current information about the financial prospects of the company and to answer questions about the union application or anything else at this meeting today."

There is an ambiguous flavour to these remarks. They could be interpreted as being advice to resist pressures brought to bear by either the union or from the employer but, on the other hand, they could be interpreted as a suggestion that employees should pay particular attention to the wishes of the employer. As perceived by an employee who feels under some compulsion to listen to the speech and respond to the wishes of his employer, these remarks are more likely to give rise to the latter inference.

14. The Board considers that both the statements made by the employer, and the circumstances in which they were made, create some doubt as to whether the statements of desire were voluntary expressions of the true wishes of the employees. Our assessment of the reliability of the statements of desire, however, does not depend solely upon those two factors. Of equal importance, is our assessment of the testimony of the two employees representing the petitioners. These two employees were questioned at length as to the circumstances giving rise to the petition and, particularly,

as to whether there was any management involvement. Both these employees testified that they received no assistance from management in obtaining the signatures of employees. After assessing the testimony and the demeanour of the two witnesses, the Board is less than convinced about the lack of management involvement.

15. Mrs. Montag testified that the union was not discussed at the meeting, except for her question as to how to get rid of the union. In view of the fact that the employer's statement mentioned the union on several occasions and that the meeting lasted for an hour and a half, it is difficult to believe that a union would not be discussed at greater length. Moreover, it is difficult to accept Mrs. Montag's explanation of how she was so readily able to select a lawyer experienced in labour relations matters. Accordingly to Mrs. Montag, she contacted Mr. Sims' office immediately after the meeting, having remembered from newspaper accounts that he acted in this type of case. Mrs. Montag further testified that she had signed employees during the weekend, although the statements of desire indicated that they had been all signed on working days, either Friday or the following Monday. Casting further doubt on the reliability of the testimony is the fact that, according to Mr. Taschener, he was in possession of the statements of desire by 9:30 a.m. on the Friday, approaching employees during their break at that time. Mrs. Montag, however, testified that she only left to see the lawyer at 8:30 a.m. on that day to seek legal advice. It is difficult for the Board to believe that printed statements of desire could be available so quickly, unless those statements of desire were prepared sometime before that day. There is also the fact that Mr. Taschener was present in the plant on both Friday and Monday at a time when he was not scheduled to work, and this unauthorized presence, according to Mr. Taschener, went unnoticed by management. Finally, there is the fact that, even though the employees were approached at their homes during the weekend, all of the signatures were obtained on the company's premises. The fact that employees were apparently unwilling to sign statements of desire in an atmosphere providing the greatest latitude for free expression casts further doubt on the testimony that there was no management assistance when the signatures were obtained at the plant.

16. Considering all the facts in this case, the Board concludes that it has not been demonstrated on a balance of probabilities that the statements of desire express the true wishes of those that have signed them. As a result of this conclusion, the Board is satisfied that the membership evidence filed by the union may be used to determine whether the applicant is entitled to certification. After examining the membership evidence, the Board is satisfied that more than 65% of the employees of the respondent in the bargaining unit at the time the application was made were members of the applicant on January 27, 1975, the terminal date fixed for this application and the date

which the Board determined, under Section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under Section 7(1) of the Act.

17. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: March 5, 1975.

I am unable to agree with the findings of my colleagues.

In our present society, I am unable to accept the statement of the majority that "given the economic power and supervisory authority of the employer, it is not difficult to understand that employees are likely to be highly susceptible to employer influences, either intended or unintended". While such a statement may well have been a truism twenty years ago, today one need only pick up his daily newspaper to learn that the pendulum has swung the other way.

I have more faith in the independent judgment of the individual that he is able to discern his future path than do my colleagues.

One must remember that even if affect were given to statements of desire filed in this application, the ultimate result would be only the ordering of a representative vote amongst the employees.

In my opinion, in deciding that the statements of desire did not represent the voluntary signification by the employees therein on rather speculative reasoning, I believe the majority is denying the employees that right to an independent choice which they deserve.

Neither do I find that the meeting held by the employer casts doubt upon the reliability of the employee petition. If section 56 is to have any meaning in The Labour Relations Act, and if it is the right of the employer to make such a speech without violating the Act, how then can something which is lawful be used to strike down the petition. Indeed it would seem that nothing in the speech itself concerning petitions was more descriptive than the instructions required by the Board to be posted by the employer.

Nor do I find the testimony of the spokesmen for the employees other than honest. Certainly there were some voids in their evidence. I would have been more suspect of their evidence if there were none.

Accordingly, without resorting to speculation, suspicion or bias, I am unable to find that the statements of desire do not reflect the true and voluntary expressions of the signatories to them. I am



prepared only to make a decision upon the evidence before me and in so doing am not prepared to deny the employees the right of an independent choice on a representation vote.

I would therefore order such representation vote in order that the employees might choose whether they wished to be represented by the applicant trade union.

6943-74-R: Northern Electric London Professional Association (Applicant) v. NORTHERN ELECTRIC COMPANY LIMITED (Respondent) v. U.A.W. Local 1525 (Intervener).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keeffe.

APPEARANCES AT THE HEARING: A. E. Golden and W. Heaven for the applicant; F. R. von Veh, M. Pogson and L. DeGuast for the respondent; R. Barber and J. Kneebone for the intervener.

DECISION OF THE BOARD: March 6, 1975.

1. The applicant is applying to the Board for reconsideration of its decision in this matter dated December 20, 1974, wherein the Board at paragraph #2 herein stated:

"Having carefully reviewed the representations of the parties as adduced at the hearing and applying the mandatory provisions of section 6(3) of The Labour Relations Act, the Board finds that all professional engineers engaged in engineering work by the respondent at its manufacturing facilities in London, save and except Department Managers, persons above the rank of Department Manager and persons covered by a subsisting collective agreement between the respondent and the intervener, constitute a unit of employees of the respondent appropriate for collective bargaining."

2. At the initial hearing of this matter on December 11, 1974, the Board entertained the representations of the parties with respect to the appropriateness of the bargaining unit at which time, it would appear, that the parties had reached agreement with respect to the description of the proposed bargaining unit in terms of "all professional engineers and engineers and scientists possessing an Honours Degree or equivalent employed in engineering work". In response to a query as raised by Board member Bell at that hearing,

the applicant indicated that with respect to the issue of appropriateness, it was proceeding on the basis of the provisions of Section 6(1) of the Act. However, during the course of its subsequent deliberations in this matter, the Board rejected the description of the proposed bargaining unit in the terms suggested by the parties and we further treated this application as one having been filed pursuant to the provisions of Section 6(3) of the Act.

3. In addition to the applicant's request for reconsideration of the Board's decision in this matter as contained in the letter filed with the Board dated January 10, 1975, the Board is in receipt of a letter dated January 13, 1975, from eleven "professional" employees of the respondent, (this number was reduced to nine as of the date of the subsequent hearing in this matter on February 25, 1975) who submit that they should have been included in the bargaining unit as determined by the Board, on the basis that they perform similar duties to those performed by the professional engineers in the employ of the respondent and that they are graded on the same grading system as that utilized for the professional engineers. It is clear, however, that these employees are not members of the Association of Professional Engineers of Ontario (hereinafter referred to as A.P.E.O.). Having regard therefore to the principles as set out in the (Falconbridge Nickel Mines Limited Case OLRB M.R. March 1966, p. 872, and reconfirmed at OLRB M.R. June 1966, p. 167), there is no question in the circumstances that these employees do not qualify as professional engineers within the meaning of section 1(1)(L) of The Labour Relations Act.

4. The relevant provisions affected by this application are those of section 6 of the Act, which provides:

"(1) Upon an application for certification, the Board shall determine the unit of employees that is appropriate for collective bargaining, but in every case the unit shall consist of more than one employee and the Board may, before determining the unit, conduct a vote of any of the employees of the employer for the purpose of ascertaining the wishes of the employees as to the appropriateness of the unit.

(2) Any group of employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or craft shall

be deemed by the Board to be a unit appropriate for collective bargaining if the application is made by a trade union pertaining to such skills or craft, and the Board may include in such unit persons who according to established trade union practice are commonly associated in their work and bargaining with such group, but the Board shall not be required to apply this subsection where the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made, or where the group of employees is exercising a combination of technical skills or is required to perform the skills in whole or in part of more than one craft as part of a work crew or team, the other members of which are also required to perform in similar fashion.

(3) A bargaining unit consisting solely of professional engineers shall be deemed by the Board to be a unit of employees appropriate for collective bargaining, but, the Board may include professional engineers in a bargaining unit with other employees if the Board is satisfied that a majority of such professional engineers wish to be included in such bargaining unit."

5. It is the position of the applicant that the nine employees excluded from the Board's description of the bargaining unit perform functions which are intermingled with those of the professional engineers within the respondent's general engineering group and that together with the professional engineers they form a cohesive bargaining unit. In this respect, it is not disputed that of the nine employees concerned, four of these persons are "Engineers-in-Training" possessing a Bachelor of Engineering degree and who are presently obtaining the necessary work experience towards membership in the A.P.E.O. Three persons possess Honours Science degrees and the remaining two persons are presently eligible for membership in the A.P.E.O. In this latter group, one person holds a Masters degree and the other is a member of the Quebec Association of Professional Engineers.

6. The intervener does not claim, nor is it seeking to represent these nine employees pursuant to its collective agreement entered into with the respondent effective from July 15, 1973 to February 26, 1976, which defines the bargaining unit in terms of "all technical, office and clerical employees" of the respondent. Nevertheless, the intervener expressed concern with respect to the future possible erosion of its



bargaining rights, should the Board permit these "near engineers" to be included in the "pure" engineering group. In this regard the intervener maintains that it represents 85 technical employees who are intermingled in the field of engineering in specifically defined departments of the respondent. Nevertheless, it is clear that the intervener pursuant to the terms of Appendix "A" of the said collective agreement, has a past practice of recognizing promotions out of the aforementioned bargaining unit of up to five per cent of the number of eligible employees. These promotions would be to the classification of "engineering associate" and the applicant in these proceedings is seeking to represent employees falling within this classification. The criteria for this classification appears at page 98 of the said collective agreement and is reproduced herein as follows:

"Assignment to duties falling in the sphere of engineering activity and responsibility and ability to meet one of the following requirements:

- a) Honours graduate or equivalent in science and mathematics.
- b) Evaluation by A.P.E.O. as requiring three (3) or fewer papers for professional recognition and pursuing studies towards full recognition."

7. Having carefully reviewed the representations of the parties, the Board reconfirms its decision certifying the applicant for a bargaining unit consisting solely of professional engineers having regard to the mandatory provisions of Section 6(3) of the Act with respect to the appropriateness of such a unit. In our opinion, the present legislation with respect to professional engineers [see; The Labour Relations Amendment Act, 1970 (No. 2) S.O. 1970, Chapter 85] now removes any question concerning their appropriateness for inclusion in a separate bargaining unit and the only discretion remaining within the Board would be to include the professional engineers in a bargaining unit with other employees should the majority of the professional engineers express such a preference. In this regard, we reject the submissions of the respondent to the effect that the language of Section 6(3) with respect to such a "mixed unit", could not reasonably be interpreted to include a bargaining unit consisting primarily of professional engineers together with a smaller group of technical persons working in an engineering support role. Accordingly, we find that in these particular circumstances, the applicant is precluded from applying under the general provisions of section 6(1) of the Act and its request for reconsideration of the Board's decision in this regard dated December 20, 1974, is accordingly denied.

7137-74-U: Graphic Arts International Union, Local 224 (Complainant)  
v. BEAUREGARD PRESS LIMITED (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: J.L. Shields and D. J. Shields for the complainant; D. L. Brisbin and M. Beauregard for the respondent.

DECISION OF THE BOARD: March 7, 1975.

1. This is a complaint filed by the complainant trade union alleging that the grievor, Richard Brown, has been discharged contrary to sections 3, 56, 58(a) and (c) and 61 of the Act.

2. On December 4, 1974 another panel of the Board issued a certificate granting the complainant bargaining rights for a group of the respondent's employees. The parties agreed that it was a matter of record that of the twenty-two employees in the appropriate bargaining unit eighteen had applied for membership in the complainant trade union. Shortly thereafter an application for review was filed by a representative for the group of objectors requesting reconsideration of the decision alleging an error by the Board in failing to attach weight to the petition filed in opposition to the complainant trade union. The application for review was dismissed on December 17, 1974. Following the dismissal an application for review was filed by the respondent employer requesting reconsideration on similar grounds. That application was dismissed on January 22, 1975. The instant complaint was filed on January 13, 1975 alleging that the grievors' discharge on January 3, 1975 was contrary to the unfair labour practice provisions of the Act.

3. The grievor was interviewed for a job in the respondent's press department by its General Manager, Frank Economopoulos. The grievor has been engaged in this craft both as an apprentice and journeyman for the past thirteen years. During the course of his interview the grievor told the General Manager that he was a member of the complainant trade union in that his predecessor employer was a union shop. In addition he was informed that two of the respondent's employees were members of the complainant at the time he was hired on October 25, 1974. He was hired on a three month probationary basis. Shortly after he commenced employment he was approached by four employees who were seeking information with respect to organizing the respondent's shop employees for collective bargaining purposes. The grievor thereupon referred them to representatives of the complainant trade union. A number of organizational meetings were held by the complainant trade union whereat membership cards were secured. The grievor attended these meetings and signed a card in support of

the complainant's attempts to acquire bargaining rights. The grievor did not address the meetings nor did he play an active role in signing other employees as members in the complainant trade union. After the application was filed on November 11, 1974, a petition was organized in opposition to the complainant union. The grievor was approached to sign the document but refused. He was accused by the employee who sought to secure his signature of being an organizer for the trade union. On December 2, 1974, at the hearing scheduled in the certification application, the Board in the usual course determined the appropriate unit and disclosed to the parties the membership count. As a result, the Board inquired into the origination and circulation of the statement of desire and by its decision dated December 4, 1974 set the document aside. The evidence further indicates that on or about December 9, 1974 the grievor was approached by Ron Beauregard, the respondent's President, who acknowledged in a jocular tone his knowledge of the grievor's activities on behalf of the complainant.

4. On December 12, 1974 the grievor received by registered mail a letter from Mr. Economopoulos indicating dissatisfaction with his work performance. At the time the grievor received the letter he was recuperating from a back injury. Nevertheless upon his return to his job he sought and was accorded an explanation for the letter of warning. The grievor indicated at that time that he was under the impression that the respondent was satisfied with his work performance. The grievor was informed that his work performance was lacking both from a qualitative and quantitative perspective. In this regard, Mr. Economopoulos attested to numerous examples of the grievor's shortcomings that had preceded the letter of December 12, 1974 and that culminated in the grievor's discharge on January 3, 1975. Documentary evidence was adduced before the Board demonstrative of these shortcomings. The Board does not propose to attach any great significance to the evidence adduced through Mr. Economopoulos with respect to his opinion of the grievor's capacity to perform the skills of his trade. Mr. Economopoulos admitted to the Board that he was not skilled in the pressman's craft and relied totally on the opinion of Mr. Marc Beauregard, the plant foreman, in assessing the grievor's progress during his period of probation. Marc Beauregard although in attendance at the hearing was not called by the respondent to adduce direct evidence of the grievor's job performance. Mr. Leonard Limmer, an employee of five years duration in the respondent's press department testified on the grievor's behalf indicating that in the short time that Mr. Brown was employed by the respondent he was of the view that the grievor was an "average" employee.

5. Notwithstanding the contradictory evidence adduced by the witnesses called by the parties several factors appear to be consistent with respect to the grievor's job performance. It appears that the



grievor was assigned to a machine for which he possessed little experience. The grievor admitted to producing approximately 3500 sheets per hour where the average expected capacity was 4500 sheets. In this regard we note that Mr. Limmer indicated that "it was pretty hard to judge a person who had no prior experience on the job. If he had some experience then it would be easier to judge him." The grievor admitted that he was not experienced in operating the machine assigned him when he was hired but expected some assistance that he claimed was denied him. He further indicated that he had spoiled one job that was attributed by him to a defective part in the machine which he had requested be fixed. He informed Mr. Beauregard, the plant foreman, of the machine's shortcomings but to his knowledge it was never repaired. The machine was three years old.

6. The Board has often stated that the issues as to whether or not an employee has been discharged for union activity is very rarely determined by direct evidence. Since only the employer knows the real reason for the discharge of an employee the Board often draws inferences based on an objective balancing of evidence. Nevertheless when all the circumstances precipitating a discharge have been adduced in evidence the Board's decision as to whether an employer has violated the provisions of the Act must be determined on a balance of probabilities. Where an employee has been discharged at a time coincident with a trade union's organizational campaign a suspicion of unlawful activity may arise that may require the employer to provide a reasonable explanation for the discharge. Even so, often what may appear to be a reasonable explanation is a disguise for the real reason for the employer effecting the discharge; that is to say, the employees' union activity. Nevertheless the more remote the discharge from the trade union's organizational campaign the less advantage is imputed to the employer in effecting a discharge for union activity. Indeed, the Board measures the scope and nature of a grievor's union activity in context with the point in time when the discharge occurred. Obviously the more remote the impugned activity from the trade union's organizational campaign the less suspicious may be the circumstances surrounding the discharge. The Board, however, is not oblivious to the fact that the stream of collective bargaining may carry prejudices beyond the framework of an application for certification. Nevertheless the Board is mindful of its responsibilities to draw inferences on facts adduced in accordance with the rules of evidence and the laws of natural justice and will eschew conclusions based on mere speculation.

7. In the instant case the evidence establishes that the grievor when hired as a probationary employee, and was known by the respondent to be a member of the complainant trade union. Indeed the grievor was told that two of the respondent's incumbent employees were members of the complainant. The grievor was asked by a group of employees shortly after he started work to refer them to officers of the complainant with

a view to sponsoring an organizational campaign. No explanation was forthcoming however as to why the incumbent employees who were members of the complainant union could not furnish this information. In any event, several meetings were subsequently convened whereat the grievor along with seventeen other employees signed membership cards. The grievor did not participate in signing up members nor did he address employees with a view to persuading them to become members. After the application was filed the grievor once approached refused to sign a petition. This petition was later set aside by the Board at the hearing scheduled on December 2, 1974. The grievor's refusal to sign a petition was acknowledged by the employer on December 9, 1974 at a time when an application for reconsideration of the Board's certificate had been filed by the group of objectors. On December 17, the application was denied by the Board. The grievor received the letter of warning on December 12, 1974, and was subsequently discharged on January 4, 1975. On December 27, the respondent filed its application for reconsideration on grounds similar to the application which had heretofore been denied the objectors.

8. The Board is of the opinion that a case has not been made out in support of a finding that the grievor was discharged for his union activity. Although we have no misgiving in finding that the respondent throughout the certification process harboured an anti-union animus towards the complainant, the Board cannot conclude that this manifested itself in its treatment of the grievor. At all material times the grievor, both at the time of hiring and at the time of discharge, was known to be a member and supporter of the complainant trade union. The grievors activities throughout the campaign appear consistent with the support that would attach a member of a union seeking bargaining rights. Indeed, the grievor's union activities did not appear to transcend the support that would be expected of any of the seventeen other employees who supported the complainant. We are therefore constrained to find that the grievor's activities played a role in the employer's decision to discharge. The Board therefore must conclude that the grievor was discharged during his probationary period for reasons that we are precluded from attaching an opinion.

9. The complaint is therefore dismissed.

1246-71-R: ONTARIO PRECAST CONCRETE MANUFACTURERS' ASSOCIATION, ERECTORS DIVISION (Applicant) v. Labourers' International Union of North America, Local 506 and Labourers' International Union of North America, Ontario Provincial Council (Respondents) v. Electrical Power Systems Construction Association (Intervener #1).

BEFORE: G.W. Reed, Q.C., Chairman, and Board Members E. Boyer and F.W. Murray.

APPEARANCES AT THE HEARING: W.J. Hemmerick, Q.C., and W.A. White for the applicant; R. Koskie, A. Neil, M.J. Reilly and R. Ford for the respondents; and B.H. Stewart, H.A. Beresford, W.J. Chenery and G.A. Pickell appearing for Intervener #1, Electrical Power Systems Construction Association and also for Hydro Electric Power Commission of Ontario.

DECISION OF THE BOARD:

March 7, 1975.

1. Having regard to the representations of the parties at the hearing on September 17, 1973, and to the time at which those representations were made, this application is dismissed in so far as it relates to the respondent, Labourers International Union of North America, Local 506 (hereinafter referred to as Local 506).

2. This is an application for accreditation in which the applicant seeks to be accredited as the bargaining agent for a unit of employers. It is clear from the evidence before the Board that the respondent, Labourers International Union of North America, Ontario Provincial Council, (hereinafter referred to as The Council), is entitled to bargain on behalf of more than one employer in the sectors of the construction industry and in the geographic area which form the subject matter of this application. The Board, therefore, finds that it has jurisdiction under Section 113 of the Act to entertain this application.

3. On the basis of all the evidence the Board is satisfied that the applicant is an employer's organization within the meaning of Section 106(d) of the Labour Relations Act, and that it is a properly constituted employer's organization for the purposes of Section 115(3) of the Act.

. . .

5. In its application the applicant proposed a unit of employers in the following terms:

"All employers of employees engaged in all phases of the erection and finishing of precast concrete products and other components in the building and construction industry within the Province of Ontario."

Initially counsel for the applicant advised the Board that the application was intended to cover all sectors. Later the argument was advanced that there was a precast sector but this was subsequently abandoned and the following unit proposed:



"All employers of employees for whom the respondent has bargaining rights in the Province of Ontario in the industrial commercial and institutional sector, the residential sector, the sewers tunnels and watermains sector, the roads sector, the heavy engineering sector and the electrical power systems sector."

It is to be noted that the pipelines sector has not been included because the members of the applicant have not worked in this sector. It was further proposed that a clarity note be included showing the type of work involved. Intervener #1 took strong exception to the inclusion of the Electrical Power Systems sector.

6. The unit of employers proposed in the application appears to have been taken from the memorandum of Settlement between the applicant and Local 506, dated September 8, 1971 (Exhibit 23). The agreements filed with the Board between the applicant and the Council, Exhibits 17 and 20, do not contain the words "and other components". The agreement between the applicant and the Council, Exhibit 20, was to be effective until April 30, 1971. However, no notice was given by either party on or before February 1, 1971, and by Article 1.03 of the agreement, it was automatically renewed for a year from November 10, 1971. This agreement, Exhibit 20, was thus in force on November 9, 1971, the date this application for accreditation was filed with the Board.

7. The Board does not favour the unit ultimately proposed by the applicant because in our view in the particular circumstances of this case the term "has bargaining rights" is too broad since those bargaining rights could change with respect to the work to be performed. Furthermore we do not favour in this case, the inclusion of a clarity note in terms of the type of work involved. After considering the evidence and the representations of the parties we have come to the conclusion that the unit of employers should be defined in terms of the collective agreement in force between the parties at the date of the application but with the inclusion of sectors. We wish to make it clear however, that in so finding we are not saying that there is a new craft or trade consisting of precast workers.

8. The evidence establishes that the members of the applicant perform work in all sectors named in Section 106(e) of the Act with the exception of the pipeline sector. It also establishes that work is performed throughout the Province by members of the applicant. The question left to be determined is whether the electrical power systems sector should be excluded from the unit of employers appropriate for collective bargaining.

9. In considering the question of whether to include or exclude a sector one of the tests employed by the Board has been whether the employers involved in the accreditation application have worked in the sector. See for example the General Contractors Section of the Toronto Construction Association v. The International Association of Bridge, Structural and Ornamental Ironworkers, Local 721, (hereinafter referred to as Ironworkers Local 721) [1971] OLRB REP 719, where the Roads sector was excluded because employers affected were not working in this sector. See also Mechanical Contractors Association Hamilton v. The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 67, (1972) OLRB REP 923 where the residential sector was combined with the industrial, commercial and institutional sector because the collective agreement in question covered both sectors and work was performed in both sectors though admittedly of a limited nature in the residential sector.

10. On the other hand the Board has been somewhat reluctant to exercise its discretion under section 114(1) to combine sectors and has not issued an accreditation certificate covering all of the sectors set out in section 106(e). Again the Board has not included the electrical power systems sector in any certificate issued up to this time. The issue was faced in the Ironworkers, Local 721 case and the sector was excluded "having regard to the evidence of what appears to be a highly complicated structure of collective bargaining in the electrical power systems section ....." Immediately following this portion of the decision the Board excluded the roads sector because the employers affected were not working in this sector. It is reasonable to assume from this that had the employers affected not been working in the electrical power systems sector the reason for excluding the roads sector would have applied equally to the case of the electrical power systems sector. But different reasoning was applied to that sector. This conclusion is reinforced by the fact that G. & H. Steel Service of Canada and Gilbert Steel Ltd. described in the Ironworkers, Local 721 case as the companies which do the largest volume of work in the reinforcing steel field in the area affected by that case, were, on the evidence in this case, members of the intervener as of March 11, 1971. (See Exhibit #14). In any event the highly complicated structure of collective bargaining in the electrical power systems sector is given as the reason for excluding that sector in the Ironworkers, Local 721 case.

11. On the evidence before us in this case it is clear that a highly complicated structure of collective bargaining was in existence in the sector at the time this application was made. The evidence also establishes that significant efforts are being made by the parties to that bargaining structure, and by certain employers, members of the intervener, to effect changes in that structure in order to establish

an orderly industrial relations system in the sector. The evidence also establishes that in many respects the electrical power systems sector differs materially from other sectors and these differences should be taken into account in determining whether the collective bargaining structures, existing or proposed, in the sector should be materially altered. After having given careful consideration to all of the arguments advanced by the applicant and respondent for inclusion of the sector in the unit of employers in this case we do not consider it advisable in all of the circumstances to combine the electrical power systems sector with the other sectors involved in this case.

12. In coming to this conclusion we have not sought to define what is included in the electrical power systems sector. Whether it be described as in Article 1.1 of Exhibit 36, as contended by the intervener, or whether the sector is broader in scope makes no difference for present purposes. If it is indeed broader, that is the sector excluded in this case.

13. Having regard to all the above considerations the Board finds that all employers of employees engaged in all phases of the erection and finishing of precast concrete products in the building and construction industry for whom the respondent has bargaining rights in the Province of Ontario, in the industrial, commercial and institutional sector, the residential sector, the sewers, tunnels and watermains sector, the roads sector and the heavy engineering sector, constitutes a unit of employers appropriate for collective bargaining.

. . .

24. Having regard to all of the above findings a Certificate of Accreditation will issue to the applicant for the unit of employers found to be an appropriate unit of employers in paragraph 13, and in accordance with the provisions of section 115(2) of the Act for such other employers for whose employees the respondent may after November 10, 1971, obtain bargaining rights through certification or voluntary recognition in the geographic area and sectors set out in the unit of employers.

6637-74-JD: DEEP FOUNDATIONS LIMITED (Complainant) v. United Brotherhood of Carpenters and Joiners of America, Local 18, Labourers' International Union of North America, Local 837 and Pigott Structures Co. Ltd. (Respondents).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H. J. F. Ade and O. Hodges.



APPEARANCES AT THE HEARING: W. J. McNaughton and W. Lardner for the complainant; A. M. Minsky and T. LaMacchia for Labourers' Local 837; J. C. Thomson and Leo W. Howes for Pigott Structures Co. Ltd.; and no one appearing for Carpenters' Local 18.

DECISION OF THE BOARD: March 7, 1975.

1. The complainant has requested that the Board issue a direction under section 81 of The Labour Relations Act with respect to the assignment of certain work.

2. In a decision dated January 27, 1975, the Board considered the challenge of the United Brotherhood of Carpenters and Joiners of America, Local 18 (hereinafter referred to as "Local 18") that the Board does not have jurisdiction to entertain this complaint. In that decision, the Board ruled that it has the jurisdiction to entertain this complaint and this matter was listed for continuation of hearing.

. . .

4. This is a complaint concerning work assignment made under section 81 of The Labour Relations Act. The complainant, Deep Foundations Limited (hereinafter referred to as "Deep") is an employer which is engaged in performing work for drilled caisson foundations, driving pile foundations shoring and underpinning. The work which forms the subject matter of this complaint is all work associated with the lagging phase of shoring and in particular the measuring, cutting, carrying and placing of lagging at an underground parking garage for the City of Hamilton located on Park Street between King and Main Streets in the City of Hamilton. This work has been assigned by Deep to members of Labourers' International Union of North America, Local 837 (hereinafter referred to as "Local 837"). Some of this work was claimed by Local 18. This complaint arises out of a claim by Local 18 to have certain of the work in question assigned to members of Local 18 rather than to members of Local 837.

5. At the hearing into the merits of this matter, the parties which were present agreed that the following description (which is taken from the decision of the Board in the Anchor Shoring Limited case, OLRB M.R. 528, 529-530) describes the work affected by the complaint:

The site is initially staked out by a survey crew, which also sets out marks along the perimeter of the site at 8 feet intervals. At these 8 feet marks a drill is used to bore a vertical 2 feet diameter hole to a specified depth. At about this time "H" beams are brought to the site and

are unloaded using a crane to hoist the beams from a truck and place them on the site. The crane lowers a beam, vertically into one of the holes. (In the present case the beams were 22 feet long and having a 14" x 8" cross section). The beam is held in a vertical position in the hold while ready mix concrete is placed in the hole to a depth of a few feet. The crane continues to hold the beam until the concrete is set. This process is repeated at each of the holes until the perimeter is surrounded by a series of "H" beams, which are referred to as soldier piles. It is important to note that the "H" beams have been positioned in the holes so that the open parts of the "H" face each other and the flat surfaces of the beam face the inside and the outside of the proposed excavation.

The next stage is the excavation of the site. Earth is removed by machine to the face of the "H" beam. At this time rough cut timber is delivered to the site. The timbers are 3" thick, 8 feet long and of various widths. The material is delivered by truck to the site and is unloaded in bundles by use of a crane. The earth between a pair of "H" beams is excavated by hand or power equipment to a depth of about 5" from the face of the "H" beam. The excavation of each such bay is for a depth of approximately 4 feet. The wooden lagging is then carried to the bay and placed between the two soldier piles, the face of the two "H" beams forming a flange behind which the wooden lagging is placed. The lagging is thus built upon the excavated bay by placing one timber on top of another. This process is repeated a number of times until the required depth of excavation is achieved. The end result is a wall with vertical "H" beams and planks which retain the earth at the side of the excavation. In some instances this wall later serves as the outside form when the foundation is constructed. Normally the wall is not removed except for a few feet near the top of the excavation, but remains buried in the earth adjacent to the foundation of the structure.

6. Deep performs the work of installing the lagging with a crew of four labourers. In determining jurisdictional claims in disputes under section 81 of The Labour Relations Act, the Board has formulated various criteria in order to resolve such conflicting claims. These criteria may be referred to as (i) collective bargaining relationships (ii) skill and training, (iii) economic considerations, (iv) employer's practice and (v) area practice.

7. Deep called William Ernest Lardner, George Edward Fairbanks and Maurice O'Keefe as witnesses. Local 837 called John D'Olivera, James Blanche and Roland George White as witnesses.

8. Mr. Lardner testified that he is a professional engineer and that between 1953 and 1971 he was employed by Franki Canada Limited and that his final position with that company was Divisional Manager for Ontario. In 1971 he left that company and formed Deep. He described the work performed by Deep and characterized it as the undertaking of contracts for drilled caisson foundations, driving pile foundation, shoring and underpinning and related work. He described lagging type shoring and stated that labourers are employed for this task. He agreed that the description referred to in paragraph five herein is an accurate description of the work performed by Deep with respect to this complaint. The witness gave evidence that the labourers measure the lagging. Deep has not used workers other than labourers in doing this type of shoring on deep foundations. He stated that Deep does not have a collective agreement with Local 837. He added, however, that Deep has an understanding to abide by local agreements and to use men from Local 837. The witness identified a list of shoring contracts. The list itemizes contracts for lagging type shoring jobs which had been done by Deep since its inception. Of the twenty nine contracts shown on the list, twenty two are within the Board's geographic area #8. The witness emphasized that Deep employed only labourers on these jobs.

9. Mr. Lardner testified that Deep used two labourers over a period of three weeks on the job site which is affected by this complaint. He informed the Board that Deep received a sub-contract from Pigott Structures Co. Ltd. to do the lagging and shoring. A little over 20,000 square feet of shoring was involved and the value of the contract is about \$273,000.00. The witness stated that efficiency and economy of the work force indicates to Deep that a crew of labourers is the most efficient way to handle the lagging phase of shoring. He stated that operations which have to be followed to install lagging are suitable for men normally obtained from labourers' union. Mr. Lardner pointed out that labourers' union carry men on their books who are accustomed to doing this type of work. He testified that no training was needed



to do this work and that if a man had no experience then one or two days' help by the superintendent was sufficient.

10. Upon cross examination by counsel for Local 837, the witness agreed that on all the twenty nine jobs in Ontario, the complainant had used members of the labourers' union. He agreed that in the Hamilton Area, Deep obtains men from Local 837, pays the union's rate for the job and remits dues to the union. The witness stated that to his knowledge he had never employed carpenters to do the lagging phase of shoring and that Deep does not have collective agreements with the carpenters' union for this work.

11. Mr. Lardner agreed that he had launched this proceeding to clarify Deep's rights because the witness had been approached by Mr. Fenwick of the Carpenters' union with a claim for some of the work in dispute. He stated that the safety record on the job-site was very good and that there has been only one accident. On the question of economy, the witness stated that in the board's geographic area #26, the cost of labourer was \$7.00 per hour and the cost of a carpenter was \$10.00 per hour. The witness calculated that in a situation involving 20,000 square feet of lagging, if the complainant used carpenters rather than labourers that its profit for the job would be reduced by about \$6,000.00. The witness agreed that if carpenters had claimed only part of the work, such as cutting and placing, there would have been less productivity. Mr. Lardner explained that low productivity will occur because rigidity creeps into a mixed crew (carpenters wanted composite crew of two labourers and two carpenters). He explained that in lagging and shoring the work would not fit in well if carpenters and labourers were used together. He stated that the job which forms the subject matter of this complaint is the type that should be done in one operation and that it is often much more efficient if the men dealing with a job cut and place as they wish. He explained that it is desirable to have interchangeability in the lagging phase of shoring and that if the labourers are used to do this, a continuous operation is efficient.

11. In re-examination, the witness explained that Deep contemplated future work and was bring this complaint because it wanted to know the cost of the lagging phase of shoring. The witness also explained that it was Deep's intention to work in the Hamilton area in the future.

12. Mr. Fairbanks testified that he is Deep's superintendent on the job-site and that prior to working for Deep he had spent 20 years as a superintendent in construction. He agreed that the description referred to in paragraph five herein is an accurate summary of the work that he supervises for Deep. He gave evidence that Deep used labourers exclusively for the lagging phase of shoring and that when cutting is required, several stacks are cut at the same time with one sweep of a

chain saw. He informed the Board that approximately five to eight per cent of lagging requires cutting. The witness stated that no particular skill is involved in this work and that a couple of hours instruction and common sense is all that is required.

13. Mr. Fairbanks testified that the men involved did not receive any particular training and there were four on the job. A breakdown of the crew shows that two labourers were hired to clean up spill and then two more labourers did the trimming behind the piles. Two more men carry lagging to the site. Once a bay is trimmed, the two men measure the bay and start to install the lagging. Often the lagging has to be cut by the men who carry it. The men install the lagging and fill in sand behind so that there are no voids. The sand has to be tamped down and this is done until the required four feet is completed. The process is repeated in the next bay. In the witness' crew no one is left standing around. All of the men might be digging out dirt because placing lagging is secondary to excavation. It may be hard digging or a lot of filling and all four men have to do this. This has happened a lot on the job. No man has a specific task and it is a composite job. The witness stated that he has had experiences with a mixed crew of labourers and carpenters. When asked to compare the efficiency of the two crews, he gave evidence that it always appeared more efficient to use just labourers. In a mixed crew, men standing around and wait and there are disputes over whose job it is to do certain aspects of the work and who tells who what to do. Mr. Fairbanks informed the Board that carpenters will not take orders from the labourers' foreman and vice versa. He stressed that it is not feasible to have two foremen over four men. He stated that where there are carpenters and labourers in a crew, a larger crew is required which is more costly and less efficient.

14. The witness testified that a mixed crew is not as safe as a crew consisting solely of labourers and referred to examples from his experience in the lagging phase of shoring. The witness gave evidence that carpenters would not carry the wood and that they would wait for the labourers to carry wood for them. Under this method carpenters would measure and cut the wood and wait for the labourers to install it. This would mean, he stated, that carpenters would wait around. Mr. Fairbanks also testified that carpenters do not possess skills that labourers do not possess for this job.

15. In cross examination by counsel for Local 837, the witness stated that he had been with Deep since September 1974, that he had worked on the Toronto subway and tunnels for a period of 12 years. He agreed that he had worked in all phases of shoring including subways, tunnels and buildings. He agreed that the cutting required on this job is under ten per cent and that lagging is ordered pre-cut so as to fit the lay-out of the bays.

16. Mr. O'Keefe testified that he had worked for Franki Construction Limited for 20 years and that he has spent 14 years of these years as a construction superintendent. He informed the Board that he worked on a lagging type shoring in 1969 in Hamilton. Four men were involved in the lagging and about 12,000 square feet of lagging was involved. These four men were labourers and no carpenters were employed on the job in connection with the lagging phase of shoring.

17. In cross-examination by counsel for Local 837, the witness stated that the labourers employed on this job were satisfactory and that it was easier to have labourers on the job rather than carpenters. He also agreed that there was no problem in efficiency when only labourers were used.

18. Mr. D'Oliveira testified that he is a labourers' foreman with the Frid Construction Company Limited in Hamilton. He gave evidence that his employer is a general contractor which goes beyond the Hamilton area. He has worked for Frid Construction Company Limited for nine years. The witness described one job in Hamilton where lagging work was done and another job at the Hamilton Civic Auditorium. He was involved in both of these jobs. He testified that the type of lagging used on these two jobs was the same as the type of lagging used on the job which forms the subject matter of this complaint. He explained that labourers who are members of Local 837 did this work and that carpenters were not used in connection with the lagging phase of shoring.

19. Mr. Blanche testified that he is employed by Cooper Construction Company (Eastern) Limited which is a contractor based in Hamilton. He stated that he has been a general labourers' foreman for 31 years with this company. He testified that he is familiar with the company's jobs where lagging type of shoring is used. He referred to three jobs in the Hamilton area where his company had installed lagging and gave evidence that his employer always used labourers for this type of work. The witness informed the Board that his employer's experience in using only labourers for the lagging phase of shoring was always very good.

20. Mr. White testified that he is a professional engineer and a vice-president with Steed & Evans Limited. He has worked for this company for fifteen years. His company is primarily engaged in road building. His company was involved in lagging type work on the Hamilton area in 1972 where the widening and realignment of Highway #2 was accomplished. It was necessary to build a retaining wall and his company used labourers who were members of Local 837 to install the lagging phase of shoring. The work was successfully completed and no other union was involved in connection with the lagging phase of shoring. The witness agreed that the job had been



safely completed and that it was performed within the budget. The witness expressed an opinion that a mixed crew of labourers and carpenters becomes very rigid in terms of supervision and doing the work. While he has not worked with a composite crew in the lagging phase of shoring, he observed that in a composite crew, there is a lot of waste in effort and time. In the opinion of the witness labourers are more efficient for the lagging phase of shoring.

21. The Board now proposes to apply the foregoing evidence in the light of the criteria set forth in paragraph six herein.

(i) Collective bargaining relationships

Deep does not have a collective agreement with either Local 837 or Local 18.

(ii) Skill and Training

The lagging phase of shoring does not require any real skill and only very minimal training. This work is arduous and physical strength is a prime prerequisite. This aspect of the jurisdictional dispute favours neither Local 837 nor Local 18.

(iii) Economic considerations

The evidence indicates that if Deep uses labourers rather than carpenters or mixed crew of labourers and carpenters it is able to perform the lagging phase of shoring more cheaply. In our view this is one factor which may be considered under this heading. However, as the Board pointed out in the Anchor Shoring Limited case, supra, a differential in wage rates is not solely determinative of this question of economic considerations. There is, however, evidence before the Board of an empiric nature that it is less efficient to have a mixed crew rather than a crew consisting solely of labourers. Productivity appears to be greater when only labourers are used and supervision appears to be easier and more efficient when only labourers are used. The Board finds that economic considerations favour an assignment of the lagging phase of shoring to labourers.

(iv) Employer's practice

The job which forms the subject matter of this

complaint appears to be only the second instance in the Hamilton area where Deep has installed lagging in connection with shoring by using labourers. However, in other areas of Ontario Deep has an established practice of using only labourers in connection with the lagging phase of shoring. This criterion favours an assignment of the lagging phase of shoring to labourers.

(v) Area practice

The evidence in this regard was not as satisfactory in a quantitative sense as it might have been. However, the evidence, while it does not establish whether the examples which have been cited are a representative sampling of the practice in the Hamilton area; it is some evidence of area practice. This criterion favours an assignment of the lagging phase of shoring to labourers.

22. There was some evidence before the Board regarding the safety on the jobs where the lagging phase of shoring is involved. Such evidence was neither sufficiently detailed nor related to measurable terms to be of any real assistance to the Board.

23. Deep and Local 837 relied on section 81(2) of The Labour Relations Act and requested the Board to make any direction it might make applicable to such geographic area as the Board decides with respect to future jobs. Neither Deep nor Local 837 raised this request in their filings with the Board. Consequently, there was no notice of this request to Local 18. Counsel for Deep and Local 837 argued that there was no requirement for such notice. In our view, considerations of fairness to all parties make it highly desirable to give all parties notice of the extent to which a direction of this Board may affect their future rights and interests. In this regard reference is made to the Canadian Johns-Manville Company Limited case, (1974) OLRB REP. 2. The Board is not prepared to make its direction in this matter broader than the terms set forth in paragraph twenty-four herein. However, the Board does not base its decision on this point solely on the lack of notice to all parties. The Board is not satisfied that the parties to this proceeding have established an entitlement to relief under section 81(2) of The Labour Relations Act. The Board is not satisfied that the disputed work will necessarily create further jurisdictional disputes in the Hamilton area. Deep and Local 837 in reality based their request under section 81(2) of The Labour Relations Act on the principle of quia timet. In the circumstances of this complaint the Board is not satisfied that these two parties are entitled to have

the direction applicable to a geographic area with respect to future jobs.

24. Having regard to the foregoing, the Board makes the following direction:

The complainant, Deep Foundations Limited, shall continue to assign all work associated with the lagging phase of shoring and in particular the measuring, cutting, carrying and placing of lagging at the underground parking garage for the City of Hamilton located on Park Street between King and Main Streets in the City of Hamilton to members of the Labourers' International Union of North America, Local 837.

7072-74-M: United Cement, Lime and Gypsum Workers' International Union, Local 306 (Applicant) v. INDUSMIN LIMITED (Respondent) v. OPS Transport Ltd. (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and L. Hemsworth.

DECISION OF THE BOARD: March 11, 1975.

1. This is an application for reconsideration of the Board's decision dated February 13, 1975, where counsel raises several matters in support of its request. They may be summarized in the following manner;

- (i) the applicant herein is not the United Cement Lime and Gypsum Workers' International Union, Local 306, but John White on his own behalf and on behalf of other named employees in the bargaining unit;
- (ii) the said applicants were not parties' to the collective agreement entered into between OPS Transport Limited and Local 306 and therefore should not be prejudiced by the terms thereof; and
- (iii) the Board failed to deal with the evidence as contained in the Examiners Report in determining the issue of the appropriate employer.



2. In dealing with counsel's representations the Board has reviewed the record of these proceedings and can find no basis for concluding that the appropriate applicant party herein was anyone other than The United Cement, Lime and Gypsum Workers' International Union Local 306. On December 19, 1974 the Registrar received the following letter which reads in part;

"Re: Indusmin Limited and United Cement,  
Lime and Gypsum Workers' International  
Union, Local 306; re application under  
S. 95(2).

This is an application on behalf of  
the union for a declaration under Section 95(2)  
that the persons listed below are employees of  
Indusmin Limited.

.....Yours very truly,

John White/per E.B."

On January 9, 1975, the Registrar received a letter from counsel indicating that "we act for Mr. John White and the other applicants in respect to this matter..." On January 18, 1975 the Board received a request for subpoenas under the name of Eric Batten, District Representative. At the Examiner's proceedings the record indicates that counsel along with D. Bershaw, International Vice-President and Mr. F. Dafoe, President of Local 306, appeared on behalf of the applicant trade union. At the Board's hearing scheduled for February 12, 1975, counsel filed an appearance on behalf of the applicant trade union. No request at the hearing was made by counsel to amend the style of cause to read otherwise. It was only upon filling of the instant application for reconsideration that such a request was made.

3. We therefore find that counsel's request to amend the style of cause be denied.

4. In any event, assuming that the applicants to the instant proceeding are as alleged by counsel the Board would be compelled to dismiss the application on this ground alone in that employees in a bargaining unit lack status to file an application pursuant to the provisions of Section 95(2). Furthermore, although we agree that employees in the bargaining unit are not parties to the collective agreement they are nonetheless bound by the terms thereof. These issues were exhaustively canvassed in The Wallace Barnes Limited Case CLLC ¶16,198 at p. 932;

"In sum, then, it appears to us that when the Legislation is looked at as a whole section 68 (now S95) subsection 2, is designed to deal with questions which may arise between the parties who are negotiating a collective agreement and between the parties to a collective agreement during its operation. Moreover, in our view, it was never intended that employees should be able to refer a question under section 95(2) to the Board but rather this was to be left to one or more of the parties to the agreement. While in a sense employees in the bargaining unit are parties to a collective agreement, since a trade union acts as their bargaining agent, having chosen that agent to act on their behalf they are bound by its actions and, if a collective agreement exists, by the terms of that collective agreement. If an employee in the bargaining unit has a complaint against the union in the conduct of his affairs, section 95, subsection 2 does not in our view, give him a remedy."

In this regard, the applicant is referred to Section 42 of the Act which reads as follows:

"A collective agreement is, subject to and for the purposes of this Act, binding upon the employer and upon the trade union that is a party to the agreement whether or not the trade union is certified and upon the employees in the bargaining unit defined in the agreement."

5. The collective agreement between OPS Transport Limited and United Cement, Lime and Gypsum Workers' International Union, Local 306 clearly and unambiguously acknowledges OPS Transport Limited to be the employer party wherein the applicant party is recognized as the exclusive bargaining agent for the employees covered by this agreement; ie, "all employees of OPS Transport Limited who are employed as truck drivers at the Indusmin Quarry operation at Nephton, Ontario." There is no ambiguity, latent or patent, on the face of the collective agreement to compel us to rely on any other evidence.

6. This application for reconsideration is therefore dismissed.

7071-74-U: Tobacco Workers' International Union (Complainant) v. SIMCOE LEAF TOBACCO COMPANY LIMITED (Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members P.J. O'Keefe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Paul Cavalluzzo, Andy Satoris and Sean Kelly for the complainant; Richard Baldwin, Charles Thomas and Douglas Melville for the respondent.

DECISION OF GOERGE W. ADAMS, VICE-CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C.:  
March 13, 1975.

1. This is a complaint under section 79 of The Labour Relations Act wherein the complainant alleges that the grievor has been dealt with by the respondent contrary to the provisions of sections 56 and 58(a) of the Act. The complainant requests that the grievor be reinstated with full seniority and no loss of compensation from the time of his discharge and further that the employer cease and desist from discriminating against the grievor because of union activity.

2. The grievor was hired by the respondent on September 4, 1974. Initially it was his evidence that he was hired as a regular or steady employee in that he was hired some two months before seasonal workers are normally employed by the respondent. However he admitted subsequently to asking his foreman from time to time whether he could be put on a permanent basis and therefore we find that he was not hired as a steady employee. In response to these questions his foreman, Doug Melville, told him that a decision could not be made in that regard until the end of the season when the new programmes (non-seasonal work) would be identified and established.

3. The grievor was hired as a fork lift driver. He had not worked for the respondent since "back in the sixty's" and at that time he had not worked a full season.

4. The grievor alleges that on November 29, 1974 he was laid off and that in the circumstances the only explanation for the termination must be the union activity he was engaging in. He worked on a regular day shift until November 29th and it was his testimony that no one complained of his work performance. Thus it is argued that his termination after the respondent had moved to a three-shift operation and was therefore still hiring new employees is incapable of a credible explanation and clearly contrary to The Labour Relations Act.

5. Examining the detail of this perspective first, it was established that in previous years the respondent's labour force turnover rate (1,000 employees per year) has been two and one-half times its labour force complement (400 employees) and that at the peak of its season it employed some 359 persons. Only the grievor and Joseph



St. Louis (also employed fulltime in the Storage Department but as a shipping clerk) were terminated on November 29, 1974. It was further established that the respondent continued to hire, at least a few employees, for a third shift (night shift) after November 29, 1974 - in the first week of December - and the grievor was not offered a position on this third shift as an alternative to being laid off. However it would appear that St. Louis was not offered a night shift job either.

6. The complainant on November 28, 1974 filed an application for certification with the Board in relation to employees of the respondent and the Board sent notice of this application to the respondent on the same date. Therefore the respondent is likely to have received notice of this application on the same date that the grievor was laid off. The grievor testified that while employed with the respondent he met Andy Satoris who is employed as a full-time organizer by the complainant. As a result of this meeting he signed a membership card in the complainant organization and proceeded to help Satoris meet with other employees by taking him to the homes of employees he knew and introducing him. It was the grievor's evidence that he did this for one and one-half to two months before his termination. Satoris too gave evidence and confirmed the assistance of the grievor particularly in regard to reaching employees who live in the country. Apparently he could get along on his own in the Town of Simcoe but he found it very difficult to meet with employees who lived away from the town. Satoris testified that he commenced organizing the respondent's plant in the last week of October or early November but, in contrast to the grievor's evidence, he told the Board that the grievor helped him for only two weeks while employed - from November 13, 1974 to the date of his termination.

7. No organizing was done on the premises of the respondent and the grievor informed neither his foreman nor anyone else connected with the management of the respondent of his trade union membership or activity.

8. On the cross-examination of Charles Thomas, Senior Vice-President of the respondent and Doug Melville the grievor's foreman in the Storage Department, it was established that at the time of the grievor's termination the respondent knew or suspected that its operation was being organized. But according to Thomas this was "nothing new". Thomas admitted to knowing of the activity because an employee by the name of Charles Tisdale approached him in the plant and told him that union representative(s) had been to his home. Thomas testified that he merely asked Tisdale what he did and Tisdale told him that he asked the representative(s) to "[g]et out". Thomas denied questioning Tisdale any further and specifically denied that Tisdale told him who, if anyone, accompanied the union

representative(s) to his home. On the other hand Melville told the Board that he had heard only rumours about union organizing activities through his son who works for another company in the area. But both Melville and Thomas denied knowing that the grievor was involved in the union activities until after he had been terminated. Only then, through either union representatives or pamphlets, were they so apprised.

9. The respondent submitted that the grievor was terminated for bona fide business reasons and at the very least without reference to his union activity. As a tobacco producer the respondent commences its seasonal operations in late October of each year and it is at this time that its regular work force of 40 employees has some 350 seasonal employees added to it. The seasonal work continues until April. However market fluctuations and corresponding staffing changes throughout the season are not unusual.

10. It was the respondent's evidence that the grievor was hired two months before most other seasonal workers because it was pushing to complete a number of work programmes before the season began. These programmes consisted of making pallets to store cases of tobacco on; preparing hogs' heads sold to a United States firm; shipping 1973 crop tobacco to customers in England and Europe; storage of imported tobacco; and receiving dismantled machinery recently acquired from the MacDonald Tobacco Company. These programmes required the hiring of additional fork lift drivers to receive or move around the items connected with the various programmes. Most of these programmes were completed before the beginning of the respondent's seasonal operation in late November.

11. Therefore as the season commenced the grievor was employed, along with a William Podulak, in taking the current year's product from the re-dryer to the storage area. But the grievor was soon switched to other work. Melville testified that as the work progressed a number of factors caused him to re-employ the grievor. First, Melville started with two lift truck drivers on the day shift for the Storage Department because of the previous year's experience but, whether because business was down 30% or otherwise, it soon became apparent to him that one driver was enough. Podulak had worked for the respondent the previous year and was therefore more experienced in the storage area than the grievor and more senior to Melville's way of thinking. As a consequence in the first week of November Podulak was left performing the storage duties and the grievor was given a variety of other jobs. One of the jobs he was given was created by the continual breakdown of newly installed machinery. The respondent had recently installed new lifting, packing and strapping machinery and according to Thomas all of these devices mal-functioned at one time or another during the first few weeks of November. The strapping machinery failed to

strap the boxes of product correctly or the packing devices broke many boxes and therefore they had to be taken back and processed again. This was one of the jobs given to the grievor. His other jobs consisted of placing tages on fibre board boxes and performing a variety of odd jobs as they arose. But by November 18, 1974 the production difficulties had subsided and the grievor was left to tagging boxes and performing the other odd jobs he was assigned to from time to time.

12. On November 23, 1974 the respondent convened a production meeting of its foremen and it was Thomas' evidence that he asked them "to take a close look at their departments and if they had anyone they did not need - to lay them off". Melville attended that meeting. According to Thomas it was the respondent's practice to reassess its manpower requirements in this way once production "smoothed out" and that this "smoothing out" did not occur until on or about November 18, 1974. Thomas also stated that the respondent often over-hired at the beginning of the season to insure itself enough workers and this was another reason to reassess its staffing on November 23, 1974 in the way that it did. Melville stated that after this meeting he determined that the grievor, originally employed as a fork lift driver but then performing a variety of odd jobs, was not needed. The new machines were not creating defective boxes to be carried back and forth and the tagging could be done by others. Moreover it was his evidence that from time to time he had had to speak with the grievor about "goofing off" and his fellow employees had complained about his lack of effort. Therefore both of these facts (production and attitude) combined with the grievor's relative lack of seniority with the respondent - everyone else in the department had worked more recently for the respondent previously - caused the foreman to terminate him on November 29, 1974. Melville admitted that some hiring for a third shift did occur in early December but he said that the grievor had previously told him that he had a wife and five kids and therefore did not want to work nights. However there is a conflict in the evidence on this point because on cross-examination the grievor stated that in early November, although he was not asked directly, he told the foreman that he would work nights. But be this as it may Melville told the Board that he did not offer the grievor night work because of his previous statement and it would also appear that Melville considered the lay off disciplinary in nature because on cross-examination he said that he thought he had been "courteous to keep him as long as [he] did".

13. It is important to note that the grievor was one of two employees terminated and this other employee also worked under Melville's supervision but as a clerk in the Storage Department. No one has been hired to replace either man since their lay off and none of the employees in the Storage Department have worked overtime to perform the work that had been performed by them. In



fact, because the product market is down some 30% from last year according to Thomas, the respondent cut back to two shifts in the first week of January.

14. The task of the Board is to determine whether the evidence of the respondent represents a credible reason for the termination of the grievor when regard is had to all the surrounding circumstances. In this regard counsel to the grievor drew the Board's attention to a number of previous decisions but he particularly emphasized the following passage from National Automatic Vending Co. Ltd. (1963) 63 CLLC ¶16,278 which reads:

"Counsel for the respondent argues that the complainant has failed to discharge the onus upon it under section 65 [now 79] to prove by "substantial evidence" that Proudfoot was discharged contrary to The Labour Relations Act. The fact that the primary onus for establishing the merits of the complaint lies on the complainant, does not, of course, mean that the complainant is bound to demonstrate by direct evidence each and every fact or conclusion of fact upon which the issue in dispute depends. Reasonable and necessary inferences may and must be drawn from all the evidence adduced and that which is clearly inferable from the evidence is as much proved as if it had been established by direct evidence. As was pointed out by the Board in the Metropolitan Meat Packers Ltd. case [(1962) 62 CLLC para. 16,230 (OLRB)] the onus of proof resting on the complainant in a claim under section 65 of the Act is no greater than in an ordinary civil action, namely that to be successful a complainant must prove, by a preponderance of probability that the employer, has, in the manner alleged in the proceedings, discriminated against the employee contrary to the Act. (See also Hanes v Wawanese Mutual Insurance Company (1963) 36 DLR (2d) 718 (SCC) where the Supreme Court of Canada recently settled the question that the burden of proof in civil cases involving

quasi-criminal or criminal conduct is the standard in civil actions.)...

In order to shift the burden of justification to the employer in an action by a former employee against an employer at common law for damages for wrongful dismissal, the plaintiff employee need prove only (1) the contract of hiring, (2) the fact of his discharge and (3) his damages. When he does this, an onus then shifts to the defendant employer to establish that proper cause existed for the dismissal. (See George Ditchfield v Gibson Manufacturing Company Ltd. [(1961) 61 CLC para. 15,362 (Ont. HC)], McInnes v Ferguson (1899) 32 NSR 516; Butler v. C.M.R. [1940] 1 D.L.R. 256.)

Needless to say, however, we do not for a moment suggest, in proceedings under section 65 [now 79] that unless there is evidence to the contrary, discrimination may be found against an employer upon what amounts to mere proof of a contract of hiring and dismissal. A complainant may, however, by proving the contract of hiring, the dismissal, and certain other objective facts and circumstances, short of direct evidence of discrimination, cast such an onus of credible explanation on the employer, who alone may know or have the means of knowledge of the actual reasons for the dismissal, that if such an explanation is not given, an inference may readily be drawn that the treatment accorded the employee was discriminatory and contrary to the Act. That it is often only the employer who has the knowledge or means of knowledge of the actual reasons for the discharge is, of course, only one factor or circumstance which the Board may take into account in assessing the evidence as a whole and deciding what weight to give to it. It plainly cannot relieve the complainant of the primary burden of proof to satisfy the Board by credible evidence that the action taken by the employer was discriminatory and contrary to the Act."

15. Having regard to that passage and in light of all the evidence he requested the Board to infer that because the grievor "drove the union organizer around" his involvement in the union was common knowledge, and then from this inference to conclude that the employer had knowledge of the grievor's activities. Furthermore, it was his submission that the respondent's explanation could not be taken seriously because the grievor had not been disciplined before November 29, 1974 and he had not been offered a job on the night shift. This defective explanation, he submitted, only assisted the Board in inferring that the respondent knew of the grievor's involvement in the trade union.

16. But a close examination of the evidence does not leave these inferences free from serious doubt. It is important to note that the grievor and the union organizer were not recalled to establish that they both attended at the home of Charles Tisdale. The union organizer told the Board that the grievor helped in the last two weeks of November. Apparently he did not need assistance in the town but the grievor was of great help in reaching people living in the country. We do not know where Tisdale lives and therefore it is not clear that the grievor would have attended at his house. We have no idea if the grievor even knows Tisdale and where he lives. We also have no knowledge of when Tisdale was contacted by the union. Thus it is very difficult for us to infer that Thomas obtained knowledge of the grievor's activities through Tisdale even if we are inclined to disbelieve Thomas' lack of concern for what Tisdale had told him. Moreover, without some form of additional evidence we cannot just assume that the grievor's support of the trade union was "common knowledge" which the respondent would know of. In fact, it could be argued that the grievor's active support of the union is open to question because he had only been employed by the respondent eight or nine weeks before allegedly helping Satoris. Because of this short time span and the fact that the grievor did not even know the last name of the man he was working beside, his familiarity with the addresses of fellow workers is subject to doubt. Moreover, at the hearing, the grievor did not know or recall the union organizer's last name which again is strange if he had been introducing him to his fellow employees for two months. Just as important, the respondent's explanation for the grievor's termination has a logical business sequence to it and the timing of the sequence is equally logical. This logic runs parallel to the complainant's perspective which emphasizes the fact that only 2 people of 360 persons were terminated on November 29, 1974, and one of these persons just happened to be an important cog in the trade union's organizing activities. The evidence establishes that the grievor and St. Louis were not needed on the day shift and that this was not apparent until about the day they were both terminated. And it is not unusual that the foreman would wait until the end of the week before terminating them even if he had made his decision soon after the November 23rd meeting. He failed to offer night work



to either man and his reliance on the grievor's earlier statement about the night shift is unlikely. But he consistently maintained that he was unsatisfied with the grievor's work and used this occasion to get rid of him. The fact that he had not disciplined the grievor for his attitude earlier may go to unfairness but it is insufficiently unfair to support the inference that this portion of his testimony is fabrication when regard is had to the grievor's seniority. Moreover, St. Louis, who apparently had no involvement with the trade union, was not offered a job on the night shift either.

17. It could be argued that with such a rate of labour turnover and with Christmas so near the respondent's explanation is unbelievable. On the other hand, the tobacco industry market is 30% below last year's performance and the night shift appears to have been of a temporary nature this year and scheduled in response to previous production failures that had smoothed out by November 29th. In fact, this shift was discontinued in early January and others were then laid off. Therefore, this parallelism in the two perspectives precludes us from making the inference proposed by the complainant.

18. In summary, having regard to all of the evidence before us, without proof of some other anomolous incident shedding greater light on the respondent's motivation and knowledge, the Board cannot infer that the respondent knew of the grievor's protected activities under the Act, and similarly cannot infer that his termination was the result of an anti-union motivation.

19. This complaint is dismissed.

DECISION OF BOARD MEMBER, P.J. O'KEEFFE: March 13, 1975.

1. This is an application under section 79 of The Labour Relations Act wherein it is alleged by the complainant that the grievor, Mr. William McLean, was discharged by the respondent contrary to sections 56 and 58(a) of the Act.

2. Mr. McLean was hired by the respondent company on September 4, 1974 as a fork lift driver. McLean testified that when hired he was not told his employment would be permanent or seasonal; he believed he was hired as a permanent employee because he was hired at a time prior to the commencement of the seasonal work. He obviously wanted confirmation of the security of his employment because he testified that he had asked his foreman a couple of times if he could be put on the permanent staff. At the time of this request the grievor told his foreman, Doug Melville, that he was willing to work on the after-noon, evening or midnight shifts. The foreman, Doug Melville, told the grievor that he did not know if he could be made permanent until the end of the season. Though McLean was classified as a fork lift

driver and paid the higher rate for that job at \$3.25 an hour, he performed at various times a variety of other jobs. McLean testified that when the foreman was stuck for an employee to do a particular job that he (McLean) would do the job. His evidence established that he, in fact, was a very versatile employee.

3. A union organizer, Andy Satoris, had visited the grievor in his home and as a result of the visit the grievor joined the union and consented to assist the union organizer in signing up other employees into the union. He had assisted in the union organizing by accompanying Satoris to the homes of other employees. He was involved in the organizing in the foregoing manner for some weeks before being laid off from his job. His foreman, Doug Melville, talked to the grievor in a hotel on one occasion and told the grievor that he (the foreman) had heard that the guys were talking about getting a union in the plant. The grievor told the foreman that he did not know about that, or did he see anyone involved with the union.

4. On November 29, 1974, foreman Doug Melville approached the grievor at about 3:30 p.m. and told the grievor that he was being laid off because of a work shortage.

5. The grievor testified that at the time of his lay off there was no decrease in his work load. He said that he believed he was the only person being laid off at that date. He was not offered another job and he was not told that he would be recalled. He further testified that there were never any complaints about his work from the date he started to the date of his lay off or termination.

6. Union organizer Andy Satoris' testimony was of short duration and it was to the effect that the grievor had assisted in the union organization by being helpful. McLean knew where the other employees lived. The grievor had helped in the organizing of the union from November 13th to the date of his dismissal on November 29th, 1974 and continued thereafter to assist the union right up to the date of the instant hearing on January 29th, 1974.

7. The evidence in reply called by the respondent company is outlined in the majority decision. Certain relevant pieces of evidence with respect to my decision which has not been outlined in the majority decision is the evidence by foreman Doug Melville that the other employee, Joseph St. Louis, who was laid off at the same time as McLean, was employed for 3 to 4 hours per day and was employed in office work. Melville admitted to having a conversation at one time with the grievor in a hotel but denied that they had ever discussed the union with him.

8. In light of the conflicting evidence in this matter, the immediate problem is the matter of credibility of the witnesses,

more particularly the direct conflict between the grievor and his foreman, Doug Melville.

9. The grievor testified that he had earlier told his foreman that he was willing to work afternoon, evening and night shifts. The foreman testified that the grievor had told him earlier that because of his wife and five kids he was not willing to work on the night shift.

10. The grievor testified that he had been questioned by his foreman about the alleged rumour of the guys talking about getting a union in the plant. The foreman denied ever discussing this matter with the grievor.

11. The grievor testified that there had never been any complaints about his work while the foreman testified that from time to time he had to speak to the grievor about goofing off and there were complaints from the grievor's fellow employees about the grievor's lack of effort.

12. Apart from whether the grievor was discharged for union activities we have to look initially at all of the evidence and ask ourselves, why was the grievor terminated? From the respondent's evidence it would appear that the initial movement with respect to the lay off or termination of any of the employees of the company was first raised at the management meeting held on Saturday, November 23rd, 1974. This meeting of the Vice-President of the company and the supervisors on this particular Saturday, we are asked to believe was a meeting not with respect to difficulties, or lack of sales or other business problems, or suspected union activity, but a meeting through which they could pat each other on the back because of the now efficient running of the plant and machinery. This important week-end meeting on a Saturday was simply a meeting to discuss the success of the operation. The smooth running of the plant was now so effective and efficient that the company then had to look at the cutting off of any surplus plant personnel. So it was this meeting at which the germ of the idea of the eventual discharge of the grievor took place. The foreman, Doug Melville, did not immediately rush to rid himself of his surplus employees, but we are led to believe weighed this matter of getting rid of employee surplus with great deliberation. The other plant foremen present at this management meeting were also given the task of responding to this management urging of trimming the fat. The sum total result of the management objective of trimming the surplus employees in a plant employing at the time more than 300 employees and having a large number of supervisory personnel was the decision by one foreman only to lay off two of the company's employees on Friday, November 29th, 1974. With respect to employee Joseph St. Louis the evidence is that he was only a part-time office employee who worked only three to four hours per day. What we know for sure from the evidence is that in 'operation clear-



out' only one full-time plant production employee was axed and that was the grievor, William McLean, who also was the sole rank and file employee involved in the union organizing campaign. At 3:30 p.m. on Friday, November 29th three and one-half working weeks to Christmas, foreman Doug Melville, in response to a top management decision to get rid of surplus employee requirements, approached the grievor, William McLean, and told McLean that he was being laid off because of the shortage of work. Foreman Melville knew that the shortage of work reason was a lie, McLean knew it was a lie, his fellow employees knew it was a lie and we now know that that excuse was not true. The reason given for the termination of McLean as 'shortage of work' cannot be accepted. That reason for termination or lay off of employment was a callous deliberate act inflicted on an employee in a casual seasonal industry. With McLean's marginal weekly wages and with his family responsibility coming so close to the Christmas season of goodwill, it was an act that was guaranteed to cloud the Christmas of the grievor McLean, his wife and his five children.

13. Why would the respondent company who at the time were satisfied with its efficient plant operation and who were in the process of establishing an additional production shift requiring the hiring of additional employees, resort to a massive overkill in terminating the employment of McLean? The goofing off reason for termination and the alleged complaints by McLean's fellow employees about McLean's lack of effort, are in my opinion, so clearly afterthought bolstering reasons for the unexplainable lay off as to mark the foreman, Doug Melville, as a witness devoid of any semblance of credibility.

14. In complaints under section 79 of the Act heavy reliance must be placed on circumstantial evidence. This Board from its long experience is well aware that we have not as yet been fortunate enough to get a confession of guilt by a respondent company when accused of discharging an employee because of his union activity. For this reason the Board's guidelines and reasoning in such cases as National Automatic Vending Co. Ltd. (1963) 63 CLLC ¶16,278; Metropolitan Meat Packers Ltd. (1962) 62 CLLC ¶16,230; Fruehauf Trailer Company Limited [1973] OLRB Rep. October 547; and Disposal Services Company [1965] OLRB Rep. January 529, have evolved to assist the Board in its deliberations. There are some clear cut cases, as in the instant case, where the complainant has well established its case and has caused the onus to shift to the respondent to provide this Board with a credible explanation for its action in discharging an employee. When the explanation given is not credible such explanations must be rejected outright.

15. Having regard to all of the evidence in this matter I would reject outright the reasons given by the respondent for the discharge of the grievor. I would find on the balance of probabilities that the grievor was discharged by the respondent company for his union

activities and I would order the reinstatement of the grievor, William McLean, to the same position which he held prior to his unlawful dismissal. I would further order the respondent to pay full compensation to William McLean for wages and benefits lost as a result of such unlawful dismissal.

7334-74-R: Teamsters Union, Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. UBA CHEMICAL INDUSTRIES LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: G. W. Adams, Vice-Chairman, and Board Members H.J.F. Ade and O. Hodges.

APPEARANCES AT THE HEARING: I.J. Thomson, W. Reilly for the applicant; D. R. Byers, W. Paul for the respondent; G. Hutton for the objectors.

DECISION OF THE BOARD: March 14, 1975.

1. This is an application for certification.

. . .

4. The Board finds that all employees of the company in Metropolitan Toronto save and except foreman, dispatchers and those above the rank of foreman, dispatcher, office and sales staff, constitute a unit of employees appropriate for collective bargaining.

5. The Board found there to be fifteen employees in the above described bargaining unit as of the date of the application and the applicant filed eleven membership documents with the Board on or before the terminal date set for the application and the date on which the Board determines the number of employees in the unit who were members of the trade union for purposes of the application. All eleven of these membership documents pertained to or correspond with the names of employees employed in the bargaining unit. Accordingly were it not for the existence of a handwritten statement of desire filed in opposition to the applicant trade union bearing a total of eight signatures of persons purporting to be employees of the respondent, the applicant would have been entitled to a certificate without further inquiry. However because five of the names appearing on the handwritten statement of desire correspond with names appearing on membership documents filed by the applicant the statement of desire is relevant and must be inquired into. If it is found to be an accurate and voluntary expression of the employees' wishes who signed it, the overlap in names contained in this document and the membership evidence will place a cloud on the applicant's entitlement to outright certifica-

tion. In such circumstances the Board's practice is to order a representation vote pursuant to Section 7(2) of the Act.

6. Paragraphs 4, 5, 6 and 7 of Form 5 of the Board's forms ("The Green Sheet") reads:

"4. Any employee or group of employees affected by the application and desiring to make representations to the Board in opposition to this application must send to the Board a statement in writing of such desire, which shall,

- (a) contain the return mailing address of the employee or representative of a group of employees;
- (b) contain the name of the employer concerned; and
- (c) be signed by the employee or each member of a group of employees.

5. The statement of desire must be,

- (a) received by the Board not later than the terminal date shown in paragraph 3; or
- (b) if it is mailed by registered mail addressed to the Board at its office, 400 University Ave., Toronto 2, mailed not later than the terminal date shown in paragraph 3.

6. A statement of desire that does not comply with paragraphs 4 and 5 will not be accepted by the Board.

7. Any employee, or group of employees, who has informed the Board in writing of his or their desire in accordance with paragraphs 4 and 5 may attend and be heard at the hearing in person or by a representative. Any employee or representative who appears at the hearing will be required to testify, or produce a witness or witnesses who will be able to testify from his or their personal knowledge and observation, as to (a) the circumstances concerning the origination of the material filed, and (b) the manner in which each of the signatures was obtained.



THE BOARD MAY DISPOSE OF THE APPLICATION  
WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE  
STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO  
ATTEND.\*

\* EXPLANATORY NOTE: Where employees fail to attend in person or by a representative or to testify or produce witnesses to testify as provided in paragraph 7 above, the Board normally does not accept the statement of desire as casting doubt on the evidence of membership filed by the applicant."

7. These paragraphs put everyone who objects to the application for certification on notice that they must file a statement of desire with the Board not later than the terminal date accorded to the application and, just as important, that employees filing such a document must come to the hearing or send a representative to the hearing to testify from his or their personal knowledge and observation "as to (a) the circumstances concerning the origination of the material filed and (b) the manner in which each of the signatures was obtained." The Board depends on this procedure to satisfy itself that the statement of desire is an accurate and voluntary reflection of the wishes of the employees who have signed such statements of desire.

8. It is important to note that the Board does not require each and every employee who signs a petition or statement of desire to attend the hearing. It is sufficient that a representative having full knowledge of the petition attend. But the representative must be able to relate the entire history of the document to the Board. The Board's experience establishes that employees are easily encouraged by their employer to resign from trade union membership applications, and therefore the Board must thoroughly examine the origination and circulation of a petition in opposition to the union - particularly one bearing the names of employees who only shortly before signing the petition have signed trade union membership applications. In short allowing for the lay persons approach to such matters, the evidence in support of the petition ought not to be flimsey, incomplete, vague or uncertain if the Board is to fulfill its statutory duty.

9. A Mr. Gord Hutton and a Mr. Bob Lawless attended the hearing to give evidence in support of the petition filed in opposition to this application - a petition bearing the signatures of eight persons. Both Hutton and Lawless are employees of the respondent and both had signed the petition.

10. The Board's documents establish that the application for certification was filed with the Board on February 19, 1975 and that the employer posted Form 5 on its premises on February 20, 1975. The petition is dated February 21, 1975 and reads:

"Gord Hutton  
7152A Airport Rd.  
Malton, Ontario.

Feb 21/75

Dear Sirs,

Below are the signatures of employee's of U.B.A. Chemical Industries Co., who do not want to have Local 938 of the Teamster's Union as their bargaining agent.

signature #1  
" #2  
" #3  
" #4  
" #5  
" #6  
" #7  
" #8"

11. It was Hutton's evidence that he decided to oppose the trade union on hearing of its imminent application a few days before Thursday February 20, 1975. Hutton does not exercise managerial functions (nor does Lawless) and he denied conferring with any members of management in arriving at this position. On February 20, 1975 he read "the Green Sheet" - Form 5 - and on Friday, February 21, 1975 he set about to get the signatures of employees similarly minded. He testified that he obtained employee #2's signature either Friday or Monday and when he signed it the preamble following "Dear Sirs" was missing. However Hutton testified that he told employee #2 why his signature was being solicited. This signature was obtained on company premises during company time but the Board was told that no members of management were present.

12. Hutton testified that employee #3 - Mr. Lawless - signed the petition without the preamble on Monday, February 24, 1975 and that he (Hutton) inserted the preamble on this date. Employee #4 was said to have signed the document at a restaurant on Tuesday as did employee #6. Hutton told the Board that Lawless signed up employee #5. Employee #7 signed the petition on Monday afternoon during working hours and Employer #6 was said to have executed the document on Tuesday afternoon.

No explanation of why employee #7's signature - apparently placed on the petition on Monday - follows signatures that were said to have been obtained a day later. But confusion does not begin or end here.

13. Mr. Hutton concluded his evidence by informing the Board that he did not deliver the petition to the Board. Rather, because he was not coming down to the Board or its vicinity before the terminal date, he gave the petition to Mr. Lawless, on Tuesday evening and he believes Mr. Lawless put it in an envelope and gave it to employee #2. Hutton believed employee #2 delivered it to the Board although he did not see Lawless give it to him. Employee #2 did not attend the hearing. Finally, Hutton assured the Board that every employee who signed the petition before it was sent to the Board saw it in its completed form. However he could not recall when he had done this.

14. Lawless testified that the preamble was missing when he signed the document and that it was still missing when he obtained employee #5's signature. He further testified that he obtained employee #5's signature in the evening on Thursday, February 20, 1974. He gave the petition back to Hutton on Friday morning and got it back from Hutton that evening. He testified that all the signatures were on it Friday evening and the preamble had been inserted. He held on to it for the weekend and had his wife address an envelope to the Board's Registrar. Then on Monday he placed the petition in the envelope and gave the envelope to employee #2 who was to deliver it to the Board. He stated that sometime Monday or Tuesday employee #2 told him it had been delivered to the Board. It is noted that the Board actually received the petition on Wednesday, February 26, 1975.

15. The inconsistency between Lawless's evidence and Hutton's is, to say the least, astounding. Hutton told us that he obtained signatures on Friday, Monday and Tuesday (although employee #7's signature is out of sequence) and that he inserted the preamble into the document on Monday and thus apparently after obtaining employee #3's signature. He then gave the document to Lawless on Tuesday night. On the other hand Lawless testified that he obtained employee #5's signature on Thursday, February 20, 1975 and that at that time the preamble was missing. He then gave it back to Hutton Friday morning and Hutton gave it back to him Friday evening in its completed form. He kept it over the weekend only to give it to employee #2 on Monday who in turn is said to have delivered it to the Board on Monday or Tuesday - although in fact the Board received it on the Wednesday.

16. If one assumes that the employees would sign the petition sequentially, and if one believes Lawless when he says that the



preamble was missing when employee #5 signed it, one would assume that the preamble was missing when the first five signatures were obtained. All five of these signatures appear on membership documents filed by the trade union. Moreover from Lawless's evidence it can't be established that the preamble was on the document when employees #6, 7 and 8 signed it. On the other hand Hutton says that the preamble was inserted on Monday and that he continued to obtain signatures until he gave the completed petition to Lawless Tuesday evening. He assured the Board that he showed each employee the completed petition although he couldn't remember the details of this courtesy.

17. Who are we to believe - if anyone? If we prefer Lawless's evidence the Board cannot assume that any of the employees either saw the preamble before signing the petition or saw the completed document. Lawless just didn't know these details. Moreover Lawless could only testify to the circumstances surrounding his signature and employee #5's signature. If we prefer Hutton's evidence the Board could say only three employees signed a blank petition and these employees saw the completed petition before it was sent to the Board. However Hutton had no direct knowledge of either the circumstances surrounding signature #5 or the delivery of the petition to the Board.

18. Lawless and Hutton have a common interest and allegedly participated in this venture together. Their evidence must therefore be viewed from a common perspective and a preference cannot be easily accorded to one witness or the other. They are not opposite in interest and for this reason it would be unwise for the Board to believe one witness and thereby disbelieve the other. Rather their evidence must be collated and assessed on its totality and this totality must stand or fall.

19. We believe it must fall.

20. The discrepancies in the evidence given by the two witnesses literally destroys any evidentiary basis to the petition. On the evidence presented to this Board we have little or no knowledge about the actual origination or circulation of the petition. The evidence is so vague and full of conflicts that it is useless for his purpose.

21. At the very least we are not satisfied that the preamble or heading was on the petition before any of the employees signed it and on numerous occasions the Board has rejected petitions where documents were signed in blank even though a verbal explanation of the petition was given to the employees on signing. [see N.D. Applegate Ltd. [1963] OLRB Rep. May 104; Bennett & Wright Ltd. [1965] OLRB Rep. Nov. 514; Presland Iron and Steel Ltd. [1966] OLRB Rep. 817; Boyle-Midway (Canada)

Ltd.; [1966] OLRB Rep. December 697). Such a suspicious procedure is inherently incapable of satisfying the Board that the petition accurately reflects the voluntary and true wishes of the employees involved. Accordingly for both of these reasons, the petition is rejected.

. . .

23. A certificate will issue to the applicant.

7438-74-U: The Wood, Wire & Metal Lathers' International Union, Local 562 (Applicant) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 38 (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H. J. F. Ade and P. J. O'Keefe.

APPEARANCES AT THE HEARING: A. M. Minsky and H. K. Weller for the applicant; Stanley Simpson and Peter Hanshar for the respondent.

DECISION OF THE BOARD: March 18, 1975.

1. This is an application for relief under section 123 of The Labour Relations Act.

. . .

3. The applicant called the following witnesses: Elmo Colussi, the president of Opec Acoustics & Drywall Limited; Antonio D'Alimonte, a general foreman employed by Opec Acoustics & Drywall Limited; Clifford Harold Allen, a job-superintendent employed by Doral Holdings Limited; Edward James Longhouse, a construction manager employed by Doral Holdings Limited and Robert Charles Gunter, a first class constable with the Niagara Regional Police Department who is attached to No. 3 Division in the City of Welland. The respondent called as a witness one of its business representatives and office manager, Peter Hanshar.

4. Mr. Colussi testified that his company Opec Acoustics Drywall Limited (hereinafter referred to as "Opec") has a current collective agreement with the applicant which covers its employees who are engaged in installing drywall, lathing, suspended ceilings, metal studding and movable walls throughout Ontario. He informed the Board that this collective agreement covers the work that was commenced by Opec at the Seaway Mall on Victoria Street in the City of Welland (hereinafter referred to as the "project") in March of this year. The work in question at the project was for the supply of labour and materials

to erect and build all partitions, bulkheads, drywall ceilings in a Jack Fraser store. Opec was awarded a contract for this work on the project from Span Design and Construction Limited.

5. The witness testified that Opec did not have a collective agreement with any other trade union. He informed the Board that Opec and its employees started work at the project on March 5, 1975. Mr. Colussi gave evidence that Opec's employees were not able to perform their work because they were directed from the project by a policeman who was acting at the request of the owners of Doral Holdings Limited (hereinafter referred to as "Doral").

6. Mr. D'Alimonte testified that Opec's employees started work on the project on March 5, 1975. Opec's work crew consisted of himself and four other employees. Their work started at about 8:00 a.m. The witness informed the Board that at about 9:00 a.m. he was approached by a Mr. Hague who is a member of the respondent and asked which union he belonged to. Mr. D'Alimonte informed him that he was a member of the applicant. Mr. Hague then informed the witness that only carpenters could work at the project and that Opec's employees ought to leave the project. At this point Mr. Hague departed. The witness then spoke to Clifford Allen, job superintendent for Doral who informed him that members of the respondent had spoken to him and told him that Opec's crew were not members of the respondent and were not allowed to work on the project unless they were carpenters. At this point Mr. Allen advised the crew to leave the project otherwise he would take measures to remove the crew. After consulting the applicant the crew continued to work until about 1:00 p.m. despite Mr. Allen's insistence that the crew had to leave.

7. Mr. D'Alimonte gave evidence that a smaller crew from Opec started work at the project on March 6, 1975, at about 8:00 a.m. He informed the Board that at about 9:00 a.m. Mr. Allen approached the crew and told them that they could not work until matters were straightened out between the applicant and the respondent. The crew stopped work for about an hour and then two business agents of the applicant, Dan Connor and Bill Morris, arrived at the project and advised they crew to continue to work. The witness testified that at about 11:40 a.m. on March 6, 1975, a policeman was called to the project and the crew and the applicant's business agents were advised that unless they left the project the owner would press charges of trespass against them and that they would be arrested. He testified that at about this time the carpenters had stopped work on the project. Mr. D'Alimonte observed this stoppage of work by the carpenters who were employed on the project.

8. The policemen instructed Mr. Connor to remove Opec's crew from the project and advised him that unless this happened Mr.



Connor would be arrested and charged with trespass. At first Mr. Connor refused to obey the policeman and was briefly arrested by the policeman. However, Mr. Connor was released and the two business agents of the applicant and Opec's crew left the project.

9. Mr. Allen gave evidence that he is a member of the respondent and that Doral is the owner and developer of the project. He informed the Board that on March 5 and 6, 1975, there were several carpentry contractors at work on the project, including Niagara Drywall Limited (hereinafter referred to as "Niagara"). The witness testified that on March 5, 1975, he had a discussion with an official of the respondent about Opec's crew and the fact that they were working and were not members of the respondent. The witness also had another conversation with another representative of the respondent and was informed that unless Opec's crew was prevented from working there would be a strike by the carpenters on the project. The witness informed the Board that when Opec's crew worked on March 6, 1975, the carpenters on the project called a meeting which lasted from about 10:00 a.m. until noon. During this time the carpenters did not work. Between forty and fifty carpenters were involved in this work-stoppage. Approximately ten of these carpenters were employed by Doral. Mr. Allen testified that the carpenters would not work because Opec's crew was working on the project.

10. Mr. Longhouse testified that he is the owner's representative on the project. He gave evidence that on March 6, 1975, about fifty carpenters were standing around doing nothing between 10:30 a.m. and noon including carpenters employed by Niagara, Doral and Crawford Construction Limited (hereinafter referred to as "Crawford").

11. Mr. Hanshar testified that there are current collective agreements between the respondent and Doral, Aero Acoustics Limited, Crawford and Niagara.

12. Having regard to the evidence before it, the Board finds that an officer, official or agent of the respondent gave notice to Messrs. Allen and D'Alimonte of the respondent's intention to call a strike of members of the respondent at the project on March 5 and 6, 1975. The Board further finds that an officer, official or agent of the respondent counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike within the meaning of section 1(1)(m) of The Labour Relations Act of carpenters employed by Doral, Crawford, and Niagara. Having regard to the provisions of section 88(2) of The Labour Relations Act, the Board finds that the acts of the officer, official, or agent of the respondent are deemed to be acts or things done or omitted by respondent.

13. The respondent argued that the scope of the proposed direction ought to be very narrow in scope and should not go beyond mentioning

Doral, Niagara and Crawford. The Board rejects this proposal as being totally unrealistic. To frame a direction in such narrow terms would not resolve the impasse at the project and would, in our view, only serve to invite ingenious attempts to maintain the status quo which existed immediately prior to this decision.

14. The respondent also argued that a cease and desist direction ought not to issue where, as in the instant application, a jurisdictional dispute lies at the heart of the dispute between two unions. The respondent argued that where a jurisdictional dispute is involved an applicant ought to invoke procedures under section 81 of The Labour Relations Act and that in such circumstances the Board ought not to issue a cease and desist direction. In our view, these premises are ill-founded for an applicant has the option of which procedure or procedures it may pursue. There is nothing in the argument by the respondent which persuades us not to issue a cease and desist direction in sufficiently broad terms to bring a satisfactory resolution of the dispute at the project a satisfactory resolution of the dispute at the project within the framework of The Labour Relations Act.

15. Finally, the respondent offered two more arguments. Counsel referred to an article in the collective agreement between the respondent and Doral whereby in the event of certain sub-contracting of work, the respondent may treat such a collective agreement as being at an end. Such private legislation is contrary to the provisions of section 44(3) of The Labour Relations Act and the parties to this collective agreement are not competent to enact such private legislation. Counsel argued that in these circumstances the impugned strike was not unlawful. The Board completely disagrees with this conclusion for the reasons stated above. Counsel also referred to the decision of Regina v. Fuller 4 CLLC ¶14,004; and argued that it was open to an employee, in the event of a failure by his employer in an essential obligation, to decline further performance of the employment contract. Counsel referred to a passage from the judgment of Jessup, J., to the effect that if for such reason a group of employees quit in concert, they would not be striking within the meaning of The Labour Relations Act. In our view, the decision in Regina v. Fuller was made in the context of an arbitration proceeding and the remarks of Jessup, J. are obiter dicta. In any event, article 24.01 of the collective agreement between the respondent and Doral has no relevance to the facts of this application since the contract which Opec sought to perform at the project was not with Doral. The latter had not sub-contracted any work to Opec. Accordingly, the reasoning in Regina v. Fuller does not in any way serve as a defence to the actions of the respondent.

16. The Board is satisfied that the prerequisite conditions to its exercising its authority under section 123 of The Labour Relations

Act have been satisfied and in all the circumstances deems it advisable to make the following direction:

That the respondent, its respective agents, officers, officials, servants, employees, representatives, substitutes and all other persons acting for and on its behalf refrain from:

(i) threatening Doral Holdings Limited, Opec Acoustics & Drywall Ltd. or any of their respective officers, officials, agents, representatives or employees or any other person, firm or corporation with an unlawful strike of members of the respondent employed by Doral, and/or other contractors engaged at the Seaway Mall, Victoria Street, Welland, Ontario with the view, purpose, motive or intention of preventing members of the applicant employed by Opec Acoustics Drywall Limited at the Seaway Mall, Victoria Street, Welland, Ontario from performing the work in dispute which has been assigned to them.

(ii) authorizing, counselling, procuring, supporting or encouraging an unlawful strike of members of the respondent employed by Doral Holdings Limited, Niagara Drywall Limited, Crawford Construction Limited and/or other contractors engaged at the project with the view, purpose, motive or intention of preventing members of the applicant employed by Opec Acoustics & Drywall Limited at the Seaway Mall, Victoria Street, Welland, Ontario, from performing the work in dispute which has been assigned to them.

(iii) interfering with the members of the applicant employed by Opec Acoustics & Drywall Limited at the Seaway Mall, Victoria Street, Welland, Ontario.

(iv) preventing members of the applicant employed by Opec Acoustics & Drywall Limited at the Seaway Mall, Victoria Street, Welland, Ontario, from performing the work in dispute which has been assigned to them.



7326-74-R: Service Employees Union Local 478 Affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. MUSKOKA BOARD OF EDUCATION (Respondent).

BEFORE: G. W. Adams, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

DECISION OF THE BOARD: March 19, 1975.

1. This is an application for certification.

. . .

3. The applicant proposed a bargaining unit of part-time employees and the respondent is in agreement with that unit save that it wishes to exclude two lay teaching assistants and "students casually employed by the employer during the school year."

4. The applicant agreed to the exclusion of the two lay teaching assistants (both are certified teachers) in that the unit proposed embraced employees engaged in cleaning and maintenance but it objected to the exclusion of students casually employed by the employer during the school year.

5. The students in question are hired at odd times during the school year to hand out text books and clean test tubes. The Board was informed that a total of six weeks work was involved with each student working one or two weeks.

6. The Board's practice is to recognize only full-time and part-time employees when defining a bargaining unit and to exclude only students employed during the school vacation period. Save in the canning and tobacco industries, the Board has not recognized a category of employees whose employment might be characterized as casual when defining the parameters of a bargaining unit. (See Sydenham District Hospital [1967] OLRB Rep. May 135; Toronto Driving Club Limited [1964] OLRB Rep. April 33; Melnor Manufacturing Limited [1969] OLRB Rep. March 1288. But the Board may accept an agreement of the parties in this regard. (See Union Gas Company of Canada [1968] OLRB Rep. November 816). Hence as a general matter, the respondents use of the word casual is an inappropriate adjective when describing employees, and it is no more appropriate when used in reference to the employ of students.

7. The Board has been cautious in excluding students from the coverage of bargaining units. In many industries students are employed not only when they are released from their schools during the vacation period but throughout the entire year as well - on

either a part-time or full-time basis. The latter employment relationship may be continuous or occasional. As a matter of policy the Board has excluded students employed during the vacation period but it has gone no further. Students employed during the vacation period have less in common with other more permanently employed persons and, importantly, have less of an impact on the year long employment opportunities of more permanently employed individuals. This cannot be said for students who are employed through the academic year as the fast-food chain restaurant cases attest. (See MacDonald's Restaurants of Canada Ltd. [1974] OLRB Rep. Oct. 755). Moreover we see no reason, in the circumstances of this case, to set up a separate exclusion of "casually employed students during the school year" whatever the exact definition that phrase connotes. It is out of step with our general treatment of employees and has not been accepted by the Board in the past. (See The Wonder Company of Canada Limited Case [1966] OLRB Rep. August 341).

8. Accordingly, the Board finds that all employees of the respondent in the County of Muskoka, regularly employed for not more than twenty-four hours per week engaged in maintenance and cafeteria services and plant operations save and except supervisors, those above the rank of supervisor, and office staff, constitute a unit of employees of the respondent appropriate for collective bargaining. (It should be noted that this description (except for the casual students issue discussed above) is granted on the agreement of the parties.

. . .

13. The matter is referred to the Registrar.

7176-74-U: Amalgamated Meat Cutters and Butcher Workmen of North America (Complainant) v. HOSTESS FOOD PRODUCTS LTD. (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES AT THE HEARING: M. Levinson and R. Blasina for the complainant; C. G. Riggs and D. King for the respondent.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER E. BOYER: March 19, 1975.

1. This is a complaint filed under the general provisions of Section 79 of the Labour Relations Act wherein the complainant alleges that all employees of the respondent covered by a previous pre-hearing application between the parties (Board File No. 6852-74-R) have been dealt with by the respondent contrary to the provisions of Sections 58(a) and 70(c) of the said Act.

2. The evidence as adduced in this regard establishes that the respondent traditionally granted its employees an annual wage increase on the first Monday in January of each year and that the specific amount of such increase was usually announced during the last week in the month of December. On August 14, 1974, respondent advised the employees that it would begin gathering the year's data for inclusion in its annual community survey in September as it had done in the past and that a wage increase would be granted effective January 6, 1975. On November 14, 1974, the complainant union applied to the Board and requested the taking of a pre-hearing representation vote in this matter. The respondent received notice of this application on November 19, 1974.

3. The testimony of Mr. Don King, who at the relevant time occupied the position of Personnel Manager, is that he notified the employees of the situation pursuant to his bulletin dated October 30, 1974, to the effect that although he did not know the exact amount of the annual wage increase which was to become effective January 6, 1975, he nevertheless had sufficient information from the survey as it had progressed up to this time, to conclude that such an increase would be substantial. He further stated that he was still in the midst of the survey as of the date of the union's application and that upon its completion by the end of November, 1974, he was able to arrive at the specific figure of 54 cents as representing the 1975 increase in the hourly rate.

4. In response to various queries from the employees concerning what effect the union's application for certification would have upon the annual wage increase which was to have been effective for January 6, 1975, Mr. King stated that he released to the employees Bulletin #229 on November 19, 1974, where after setting out the provisions of section 70(2)(b) of the Act, he stated as follows:

"IF THE UNION FAILS IN ITS BID FOR CERTIFICATION -  
Visits to the firms which participate in our community survey are now complete, and I am finalizing my recommendation for subsequent changes in our wage rates and fringe benefits. In accordance with the above law, we are forbidden to announce those changes until the results of the representation vote are known AND the Board serves notice that the application for certification has been approved or dismissed. If the Amalgamated Meat Cutters Union fails in its bid for certification, we will then announce the results of our annual community survey.

IF THE UNION SUCCEEDS IN ITS BID FOR CERTIFICATION -  
If the union is certified as bargaining agent, it must



give written notice of its desire to bargain for a collective agreement. The parties will meet within FIFTEEN days from the giving of such notice and negotiations would then begin. Negotiations would involve reaching agreement on every plant work rule, benefit plan and wage rate. Should a tentative agreement be reached with the bargaining committee, this agreement would then have to be ratified by a membership vote. If the parties are unable to reach an agreement, then application for conciliation services would have to be made to the Labour Ministry. The date of any resulting wage change would be subject to negotiations as well."

Pursuant to Bulletin #232 dated November 22, 1974, he advised the employees in part as follows:

"If the union is not elected as the bargaining agent at Hostess, we will continue our past practice of announcing our annual increase in December. If the Union is elected, then wages and benefits become a matter of negotiations. We take note of the Union's statement that your January increase is acknowledged as a traditional right and privilege of Hostess employees. This is true, and you never did have to negotiate or demand this annual increase."

On January 6, 1975, Mr. King, pursuant to Bulletin #245 informed the employees as follows:

"Some of you have expressed concern that the Labour Board hearing will not be held until the end of this month. It should be noted that the results of this hearing will also not be known until probably mid-February. Naturally part of your concern is your wage increase, however as you are aware, if the application is dismissed, we will back date this increase to January 6th. You will be advised of the results of this hearing just as soon as we hear from the Board."

5. Mr. King further testified that he interpreted the provisions of Section 70 of the Act as freezing any contemplated wage changes and that the consensus of opinion was to the effect that if the respondent would agree to effectuate the increase at this time it would be interpreted either by the union or the

employees as "bribery". He also stated that at the time of the complainant unions's application, he had anticipated that the matter would have been disposed of prior to the end of December and that if the union was unsuccessful, there would be no objection by the respondent to implementing the increase. However, he did not implement the increase following the union's defeat at the polls on December 6, 1974, because of the subsequent charges filed by the respondent in those proceedings. According to Mr. King, it was therefore decided to await the Board's findings in those matters as the respondent was again concerned about additional bribery allegations should it proceed further in this respect.

6. During the course of his testimony, Mr. King indicated that it was not the past practice to back-date or to give retroactive effect to the wage increases effective in January. The position of the union as set out in its propaganda material issued shortly after November 19, 1974 and entitled "Now-More Than Ever" provided in part as follows:

"A PROPOSAL FOR THE COMPANY

If the wage increase the company is talking about is so good, why doesn't the company announce it now and pay it in early January, 1975. The UNION will not stop them. Let them show you the colour of their money.

Indeed we go further. WE INSIST THAT THE COMPANY DO THE FOLLOWING:

1. Announce their increase in accordance with past practice.
2. Pay it in the first week in January, 1975 in accordance with past practice.

PURSUANT TO SECTION 70 (SUBSECTION 2) OF THE ONTARIO LABOUR RELATIONS ACT.

(This section prohibits the company from altering your rights, privileges, or duties now that the Union has applied for certification. Your January increase is a traditional right and privilege).

THE COMPANY CANNOT DENY THE INCREASE TO YOU. IT IS NOT IN JEOPARDY. THEIR SCARE TACTIC ABOUT A DELAY BECAUSE OF THE UNION IS NOTHING MORE THAN AN ATTEMPT

TO BRIBE YOU WITH YOUR OWN MONEY."

7. Further union propaganda material entitled "An Open Letter to General Foods Management in Cambridge" which was distributed on or about November 26, 1974, provided in part, as follows:

"You have indicated that the company is prepared to give a wage increase; it is certainly overdue. Yet, now you have taken the position that our union's application for certification forbids you to give that increase, claiming that it will be paid only if the union does not win the upcoming vote. This is terribly unfair to your employees particularly because such an increase is rightfully theirs and also because you are using their own money to turn them against their right to have a union.

Since our union's consent is required under the law before changing any of the current working conditions, here it is. You have our full and unconditional consent to grant the wage increase that you have in mind. We ask only this:

- (1) That it be a good, sizeable, healthy increase.
- (2) That it be made effective in time for Christmas.
- (3) That it be made payable on all hours worked since September 16, 1974, thereby giving people some back pay to put against the damage of this year's inflation. This as you know, is our union's position in the current Lasalle-Cobourg negotiations and, given the already huge gap between what you pay there and what you pay here in Cambridge, it is surely the only fair thing to do.

Not only do we offer our consent to grant such a wage increase, we positively urge you in the strongest possible terms to do so.

Since our union will, by all accounts, succeed in the upcoming vote, you have our assurance that proper credit will be given



to you for having made such an adjustment. It will certainly make negotiations on the matter of parity more down-to-earth and reasonable if such a demonstration of good faith has already been made by you.

Please do not play politics with your workers incomes. Please do not attempt to hide behind a legal technicality, a technicality which, by the way, this letter puts to flight."

In this regard, Mr. King testified that the last two conditions had never been put into effect in the past and that in any event, the respondent had never looked to the union in these proceedings for consent to grant the increase. In these circumstances, therefore the Board need not decide upon the propriety of the respondent's allegation to the effect that "strings" or conditions had been improperly imposed upon such union consent.

8. It is the position of the complainant union that the complaint crystallized on January 6, 1975, when the respondent had failed to implement the annual wage increase of 54¢ per hour, which it had an obligation to do pursuant to the provisions of Section 70(2) of the Act. Counsel for the respondent, on the other hand, argued that recent judicial pronouncements have opposed the Board's interpretation to include "wages" in Section 70(2) as set out in the Ottawa General Hospital Case OLRB M.R. June 1972, p. 681. In the alternative, and assuming that an alteration of wages does fall within the ambit of this provision, counsel argued that in any event, in all of the circumstances, there had been no violation. Counsel for the respondent further argued that the Board would not have the jurisdiction to impose the wage increase in the absence of specific language under the provisions of Section 79 of the Act.

9. Having carefully reviewed the extensive evidence as adduced in these proceedings, the Board finds that as of October 30, 1974, and up to November 19, 1974, the time when the respondent received formal notice of the union's application the employees were seized with an unalterable right to a substantial wage increase to become effective January 6, 1975. We are further satisfied that although the exact amount of such increase was not specifically determined at this point, its implementation became mandatory and automatic as of January 6, 1975, and the only discretion remaining within the respondent was with respect to the "substantiality" of the increase as gleaned from the results of the survey which had been completed by the end of November 1974. In the result, we conclude that as the

implementation of the wage increase had effectively been pre-determined and put into motion in accordance with the respondent's past practice prior to the onset of the statutory prohibition period, the respondent thereafter was not in a lawful position to unilaterally withhold the payment of such increase pending the disposition of the matters involved in the union's application for certification (Board File No. 6852-74-R). In reaching this conclusion the Board has also considered the principles as set out in the Scarborough Centenary Hospital Case OLRB M.R. January, 1969, p. 1049 (and the decisions reviewed therein including Kiddies Togs Mfg. Co. Ltd. v R ex rel. Deitrich 65 CLLC ¶14,040, p. 114); Fielding Lumber Company Limited Case [1971] OLRB Rep. 162 and Parr's Paint and Litho Ltd. (1973) OLRB Rep. 597.

10. As regards the representations of counsel for the respondent concerning the Board's interpretation of the provisions of Section 70(2) of the Act, we are satisfied that the Board's position in this regard has been clearly set out in the Beaver Electronics Limited Case in its majority decision at [1974] OLRB Rep. 120 and subsequently, upon a request for reconsideration of that decision, at [1974] OLRB Rep. 657.

11. In the result therefore, we conclude in the particular circumstances of this case, that the respondent has violated the provisions of Section 70(2) of the Act in failing to implement the 54 cent increase in the hourly rate to become effective on January 6, 1975.

12. Section 79(4)(a) provides as follows:

"If the Board is satisfied that the person concerned has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to his employment, opportunity for employment or conditions of employment by any employer or other person or a trade union, it shall determine what, if anything, the employer, other person or trade union shall do or refrain from doing with respect thereto, and such determination may include the hiring or reinstatement in employment of the person concerned, with or without compensation in lieu of hiring or reinstatement for loss of earnings and other employment benefits which compensation may be assessed against the employer, other person or trade union jointly or severally, and the employer, other person or trade union shall, notwithstanding the provisions of any collective

agreement, do or abstain from doing anything required of them or any of them by the determination;"

13. In our opinion, this provision is sufficiently broad and embrative to empower the Board to direct compensation in these circumstances. We accordingly direct that the respondent compensate all the employees affected by this complaint in an amount to be calculated on the basis of 54¢ for each hour worked commencing on January 6, 1975. Failing agreement by the parties with respect to the implementation of such compensation, the Board shall remain seized of the matter.

DECISION OF BOARD MEMBER J.D. BELL: March 19, 1975.

1. I disagree with the majority that the respondent was obligated to implement a wage increase of 54¢ per hour pursuant to the provisions of section 70(2) of the Act.

2. I was a member of that panel of the Board that made the initial decision to include "wages" in Section 70(2) in Ottawa General Hospital Case OLRB M.R. June, 1972.

3. This decision has since been reviewed in The Queen vs Labatt's Ontario Breweries Limited (per Dneiper R.) dated October 16, 1973, which states in part at page 4 line 36:

"It has been argued by counsel for informant that the words rights, privileges or duty are all encompassing words intended by the Legislature to include wages. I must disagree. with all respect. Relating back to Sub-section 1, there the Legislature did in fact use the words the rates of wages. This is left out of Sub-section 2. I must presume that the Legislature did this deliberately. The only reason for this is that the Legislature wished to have wages excluded from a consideration of Subsection 2, and the result, if I may refer to Ottawa General Hospital Case before the Labour Relations Board, if the situation before the Board were similar to that indicated on the face of the Information before the Court today then, with all respect, the Board was incorrect and I cannot follow their reasoning."

This decision has been affirmed by the Ontario Court of Appeal.

4. In view of the above I personally now will accept the decision of the Court and admit I participated in an incorrect



decision. Such error should not be perpetrated. Therefore, Section 70(2) of the Act, in my opinion, had not been violated and the application should be dismissed.

6852-74-R: Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. HOSTESS FOOD PRODUCTS LIMITED (Respondent).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES AT THE HEARING: M. Levinson and R. Blasina for the applicant; C. G. Riggs and D. King for the respondent.

DECISION OF VICE-CHAIRMAN FRANK V. BOSCARIOL AND BOARD MEMBER E. BOYER: March 19, 1975.

1. Pursuant to the decision of the Board dated February 7, 1975, the Board directed that this matter be listed for continuation of hearing for the purpose of entertaining the evidence and the representations of the parties with respect to certain charges filed by the applicant as set out in its letter dated December 16, 1974.
2. At the hearing of this matter on February 20, 1975 the applicant adduced evidence from Robert Ferguson and Jim McCune, two employees of the respondent included in the voting constituency as initially defined by the Board, who testified to the effect that each of them had occasion to receive in the mail at his home on Tuesday, December 3, 1974, a letter containing certain propaganda material from Mr. Neff, the President of the respondent in connection with the upcoming representation vote scheduled for December 6, 1974. In this regard, the Registrar, in the "Form 42, Notice of Taking of Vote", had directed all interested persons to refrain and desist from propaganda and electioneering from midnight of Monday, December 2, 1974, until the vote was taken.
3. In response to this testimony, the respondent in defence called Richard Bloomfield, the respondent's "Office Services Co-Ordinator". Mr. Bloomfield stated that at approximately 12:50 p.m. on Friday, November 29, 1974, he had received instructions to deliver a box containing copies of Mr. Neff's letter to the post office situate in Preston. This correspondence was destined for ultimate delivery to the homes of over 500 employees of the respondent in Cambridge and the surrounding areas. (The revised voters' list in this regard

discloses 579 names). Mr. Bloomfield further testified that ordinarily this delivery function would have been performed by an outside courier retained by the respondent for such purposes but since the latter's daily pick-up of mail at the respondent's premises was not to occur until 4:45 p.m. that Friday, Mr. Bloomfield himself personally delivered these letters to the post office at approximately 1:00 p.m.

4. Mr. Bloomfield further testified that in his opinion, any letter picked up by the courier at 4:45 p.m. on any given working day, would be sorted that evening by the post office personnel and that such a letter would be delivered to the recipient's home address by the next working day. However, in the instant case, he had a conversation with the Preston postmaster concerning the sorting question and on the basis of certain assurances given to him at this time, Mr. Bloomfield concluded that if these letters arrived at the post office earlier that Friday they would have been delivered to the addresses in the surrounding Preston area by the following Monday.

5. Mr. Bloomfield was then asked by counsel for the respondent to relate the specific assurances given to him by the postmaster during the course of this conversation. Counsel for the applicant objected to this question whereupon the Board, upon being advised that the postmaster was not being called to give testimony in these proceedings, ruled that the question was improper in the circumstances. Upon directing Mr. Bloomfield not to answer the question, we noted for purposes of the record, the objections as raised by counsel for the respondent concerning the Board's ruling in this respect.

6. The principles applicable to the facts in the instant case, we find have been duly set out in the Windsor Telephone Answering Service case [1973] OLRB Rep. 460, where the Board, at page 461, stated as follows:

"7. In matters relating to whether a second representation vote should be directed in circumstances where the Registrar's direction with respect to the silent period is violated, the Board must ascertain whether all reasonable precautions were taken to avoid the breach. In such instances, there is no absolute prohibition which will vitiate a representation vote, but rather there is a heavy onus on the parties to see that the prohibition is not infringed. (see; Automatic Electric Case 61 CLLC ¶16,226; Waterloo County Health Association Case OLRB M.R. May 1965 121).

8. In cases involving mailed propaganda where allegations of violation of the silent period are made this Board has viewed with some leniency correspondence mailed prior to the onset of the silent period but because of shortcomings in the delivery of the mail the Registrar's direction has been compromised. In such instances, the Board usually requires first hand evidence that assurances were obtained from the appropriate postal authorities that the propaganda would arrive on time. In brief, failure to adhere to the Registrar's direction may reasonably be attributed to circumstances beyond the control of the party. [see; Komoka Nursing Homes Limited Case [1973] OLRB M.R. January 28); Kralinator Filters Limited Case OLRB M.R., August 1966 312; Waterloo County Health Association Case (supra)]."

7. Having carefully reviewed the representations of the parties, and in the absence of "first hand evidence" with respect to any assurances afforded by the Preston postmaster to the respondent, we are not prepared to find in the particular circumstances of this case that the respondent has satisfied the "heavy onus" placed upon it to satisfy this Board that it had taken the necessary precautions to ensure that the Registrar's prohibitions were not violated.

8. In addition, to the respondent's violation of the silent period, counsel for the applicant in his argument referred to further alleged grounds as to why the Board should order that a second representation vote be taken in this matter. These grounds included the presence of certain managerial personnel in the polling area during the course of the vote, the issuance by the respondent of new uniforms to all of its male employees on the day immediately preceding the vote, the changing of the particular location of the polling area in the cafeteria as previously agreed to by the parties to another location in the cafeteria without the union's consent and finally, that certain of the statements as contained in the propaganda distributed by the respondent prior to the vote had effectively prevented the employees from freely expressing their desires therein.

9. Having carefully reviewed the evidence as adduced in this regard, and although we would query the need for the presence of Herbert Coles, the production manager, at the afternoon poll, we are not satisfied that the managerial personnel stationed in the vicinity of the polling area engaged in any improprieties during the course of their scheduling the employees to report to the polling area, pursuant to an agreed upon itinerary.



We likewise find no improprieties associated with the issuance of new uniforms to the male employees on December 5, 1974, having regard to the respondent's normal policy of granting such a general distribution at such times in previous years. As regards the respondent's actions in unilaterally changing the specific location of the polling area within the cafeteria, (and which actions were not objected to by the applicant at the commencement of the vote), we accept the respondent's explanation that such a change was necessitated because of the proximity of the original location to the access doors. Accordingly, we are not satisfied having regard to all of the circumstances, and taking into account the principles as set out in the recent Constellation Hotel Corporation Limite Case (Board File No. 5916-74-R), that any of the factors taken individually or in toto, placed any impediment upon the employees freely expressing their views during the course of the representation vote.

10. However, we have some concern with respect to the contents of the propaganda material as issued by the respondent in this matter. Pursuant to Bulletin #193 dated August 14, 1974, Mr. Don King, the Personnel Manager at the time, advised the employees as follows:

"Some of you have expressed concern over reports that some area firms have granted cost of living wage increases and you are wondering what action, if any, Hostess is planning in this area. The purpose of this bulletin is to explain our position at this time.

Four of the fourteen firms which participate in our annual community survey have announced wage increases averaging 15¢ per hour. The other ten firms have indicated no intention to change wages other than the normal or negotiated increases.

You may recall that back in January 1 had issued a News and Views bulletin which explained how we compared to community wage rates on an annual basis. In this bulletin, I stressed the following points:

- a) When we gather community wage data we not only consider the wage rates being paid at the time of the survey, but we also INCLUDE any increases which have been negotiated or are anticipated for the following six months. In other words, our wage rates are substantially higher than the average paid elsewhere for the first half of any given year and on average for the remainder of the year.

- b) As you are aware, some firms pay a straight hourly wage while others pay on a piece work or incentive basis and some do have cost of living escalator clauses. Here again, even though we pay on the straight hourly basis, we ask the participating firms to give us their actual rates, including both incentive and cost of living figures.

At this time we do not plan to make any special wage adjustments. As in the past, we will begin gathering this year's data in September, with the intention of announcing a general wage increase effective January 6th. Present indications are that this increase may be a substantial one, however we won't know this for sure until all the data has been collected and reviewed."

By Bulletin #212 dated October 3, 1974, he indicated, inter alia, as follows:

"The organizing campaign presently being conducted by the Amalgamated Meat Cutters & Butcher Workmen of North America is now in it's third month. I believe therefore, it may be appropriate at this time to review some of the issues that may be troubling you as a result of this campaign.

Higher Wages - we recognize in these inflationary times that wages are an important subject. In earlier bulletins we have indicated that our early findings in our annual community survey do point to a substantial increase in Hostess wage rates come January. We also have openly invited you to compare your wage rate, benefits and working conditions to those provided your friends and relatives working in the area. I am pleased to hear reports that you are making this direct comparison, including a direct contact with some of the firms we have identified as being included in our survey."

On October 30, 1974, he advised the employees, inter alia, as follows:

"This is the fourth bulletin in a special series which is intended to show you what differences (if any) exist between Cobourg and Cambridge work rules or policies. We feel it is important for you to be aware of these differences in order that you can properly assess the union claim that it can improve your working conditions and wages. If we do face a representation vote, the choice will be yours and YOURS ALONE to decide whether or not you desire union representation.

COMPARATIVE WAGE RATES - We acknowledge the fact that Cobourg wage rates are higher than Cambridge rates. I wish to point out however, that we are NOT competing with Cobourg in attracting people for work. Our rates are competitive with those paid by other industries in our community and indications are that our findings in this year's community survey will result in a substantial increases effective January 6, 1975. As in the past, the increase we announce in December will not only match current community increases, but it will also include those increases which have been negotiated or are anticipated up to and including June, 1975.

As you are aware, Hostess employees received a 28¢ per hour increase on January 7, 1974 and Cobourg people got 32¢ per hour five months later on May 20, 1974. The next Cobourg increase will be 5¢ per hour on December 2, 1974, while you will receive substantially more some four weeks later."

Following the applicant's request for certification which was filed on November 14, 1974, Mr. King, pursuant to Bulletin #229, dated November 19, 1974, advised the employees as follows:

"Some of you have asked what effect the union's application for certification will have on the annual wage increase which had been scheduled for January 6th. The following is intended to answer this question.

WHAT THE LAW SAYS - As per Section 70 of the Ontario Labour Relations Act - 'Where a trade union has applied for certification and notice thereof from the Board has been received by the employer - no employer shall, except with the consent of the trade union, alter the rights, privileges or duties of the employees until the application for certification is dismissed or terminated by the Board, or withdrawn by the trade union'.

IF THE UNION FAILS IN ITS BID FOR CERTIFICATION - Visits to the firms which participate in our community survey are now complete, and I am finalizing my recommendation for subsequent changes in our wage rates and fringe benefits. In accordance with the above law, we are forbidden to announce those changes until the results of the representation vote are known AND the Board serves notice that the application for certification has been approved or dismissed. If the Amalgamated Meat Cutters,



Union fails in its bid for certification, we will then announce the results of our annual community survey.

IF THE UNION SUCCEEDS IN ITS BID FOR CERTIFICATION -  
If the union is certified as bargaining agent, it must give written notice of its desire to bargain for a collective agreement. The parties will meet within FIFTEEN days from the giving of such notice and negotiations would then begin. Negotiations would involve reaching agreement on every plant work rule, benefit plan and wage rate. Should a tentative agreement be reached with the bargaining committee, this agreement would then have to be ratified by a membership vote. If the parties are unable to reach an agreement, then application for conciliation services would have to be made to the Labour Ministry. The date of any resulting wage change would be subject to negotiations as well."

In response to certain union propaganda, Mr. King released Bulletin #232 dated November 22, 1974, which provides:

"THE UNION SAID: "The oldest trick in the company's book is to try and convince employees not to join because the company is about to give them a wage increase anyway. They are asking you to accept their word about what is good for you."

COMMENT: You know that the next increase was scheduled for January 6, 1975 and you also know that it will be a substantial one based on our findings in the community survey. On August 27th, I wrote that Hostess has met its commitment to pay wages and provide benefits which are as good as or better than that which prevail in the community we live in. We also asked that you not just take my word for this claim, but to check with your friends, relatives and neighbours and compare notes for yourselves.

THE UNION SAID: "Does the company consult you on your needs for a decent wage increase? No."

COMMENT: We directly survey 14 area firms and the data collected in this survey is double checked with the wages and benefits provided by more than 100 other firms, including those with union representation.

THE UNION SAID: "We insist that the company announce their increase in accordance with past practice and pay it in January, 1975 in accordance with past practice."

COMMENT: If the union is not elected as the bargaining agent at Hostess, we will continue our past practice of announcing our annual increase in December. If the union is elected, then wages and benefits become a matter of negotiations. We take note of the union's statement that 'your January increase is acknowledged as a traditional right and privilege' of Hostess employees. This is true, and you never did have to negotiate or demand this annual increase."

11. In addition to the above statements of Mr. King, counsel for the applicant drew our attention to the contents of Mr. Neff's letter dated November 29, 1974 (see Paragraph #2) and in particular he referred us to the concluding paragraphs which are reproduced herein as follows:

"Don King has shown in a recent bulletin that our major competitors have lower wage rates - and that comparison was made only a few weeks away from our intended January increase. We are able to pay higher wage rates, because we try harder, outsell, and generally outperform our competitors.

This has not yet answered the question of why parity with Cobourg is not possible for Hostess. General Foods competes in the National Grocery Industry with companies paying similar rates. The Grocery Industry is in that respect similar to the Automotive and Steel Industries. So the answer to the question "why not pay Grocery Industry rates at Hostess?" is that if required to do so, we could no longer compete in our own Potato Chip Industry.

Should we at Hostess care about being competitive in our industry, or do we have a choice?

As far as I can see we had better care, if we are at all interested in our continued success, as a business and as individuals.

In a recent publication, the union has declared that they have already won, before the vote has taken place. It is my hope that in spite of this kind of talk, and other union claims, you will make up your own mind in the privacy of the voting booth."

12. It is the position of counsel for the applicant that in these circumstances, the statements emanating from Mr. King on behalf

of the respondent, in effect, represented to the employees that in the event the union was unsuccessful in its application for certification then the employees would immediately receive the wage increase, but if the union was to be successful then the Company would commence the lengthy process of bargaining "from scratch", constituted undue influence upon the minds of the employees at the time of the vote sufficient to warrant the taking of a new vote. Counsel further argues that Mr. Neff's statements as set out above also transgressed the respondent's right of free expression as set out in Section 56 of the Act.

13. Having carefully reviewed all of the extensive propaganda material issued by both parties as filed in these proceedings, we do not share the view as implied in the argument by counsel for the respondent that the Statements emanating from the respondent lost their significance when viewed and gauged in the context of its reply to a vigorous organizational campaign conducted on the part of the union. More particularly, with respect to Mr. King's statements as set out above, we find that the message conveyed to the employees was clearly discernible that is to say, the employees were invited to reject the union and thusly obtain an immediate salary increase or otherwise they must be prepared to assume the risks inherent in the arduous negotiations which would subsequent ensue. In these circumstances and taking into account the principles as set out in the Gestetner (Canada) Limited Case OLRB M.R. February 1971, p. 62 and the J. E. Martel & Sons Lumber Limited Case [1972] OLRB Rep. 811, we find that these statements constitute undue influence such as to prevent the true wishes of the employees from being disclosed in any representation vote. However, as regards the contents of Mr. Neff's statements, we do not find that such statements, in the particular circumstances, sufficiently akin to those as utilized in the circumstances of the Seven-Up (Ontario) Limited Case OLRB M.R. May 1970, p. 198, so as to warrant our finding that the respondent's electioneering activities in this regard have exceeded the limits of Section 56 of the Act, as suggested to us by counsel for the applicant.

14. Having regard therefore to the respondent's breach of the silent period and to the nature of Mr. King's statements, the Board directs that the pre-hearing representation vote conducted on December 6, 1974, be set aside and further directs that a new representation vote be held.

15. A representation vote will be taken of the employees of the respondent in the voting constituency described in paragraph #3 of the decision of the Board in this matter dated September 28, 1974. All employees of the respondent in the



voting constituency described in paragraph #3 of the decision of the Board dated September 28, 1974 on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

16. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

17. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER J. D. BELL: March 19, 1975.

1. I disagree with the finding of the majority that the respondent did not take the necessary precautions to ensure that the Registrar's prohibitions would not be violated when it mailed Mr. Neff's letter to over 500 employees on Friday, November 29th, 1974.

2. Mr. Richard Bloomfield, the respondent's Office Services Co-ordinator, gave evidence that he personally delivered the letters to the post office in Preston at about 1:00 p.m. rather than wait for the normal pick up at 4:45 p.m. This was done, after conversations with the Preston Postmaster, to provide an extra margin of time for sorting to ensure delivery by Monday. The Board refused to hear what the specific assurances were that the postmaster gave to Bloomfield because the Postmaster himself was not called to give evidence. The decision was strongly objected to by counsel for the respondent.

3. The principle applicable to mailed propaganda set out in Windsor Telephone Answering Service at page 461 states:

"8. In cases involving mailed propaganda where allegations of violation of the silent period are made this Board has viewed with some leniency correspondence mailed prior to the onset of the silent period but because of shortcomings in the delivery of the mail the Registrar's direction has been compromised. In such instances, the Board usually requires first hand evidence that assurances were obtained from the appropriate postal authorities that the propaganda would arrive on time. In brief, failure to adhere to the Registrar's direction may reasonably be attributed to circumstances

beyond the control of the party. [see Komoka Nursing Homes Limited Case [1972] OLRB M.R. January 28; Kralinator Filters Limited Case OLRB M.R. August 1966 312; Waterloo County Health Association Case (supra)].

The Board then continued:-

9. In the circumstances before us, this Board cannot conclude that the applicant has discharged the "heavy onus" placed upon it. Although the violation of the no propaganda period was not intentional, nevertheless this Board is satisfied that the violation could have been avoided had more care been exhibited in obtaining assurances that the propaganda would arrive in time. The applicant's business agent was under the wrongful impression that mail delivered in the Windsor area would automatically arrive on a certain day. No evidence was led to indicate the steps taken to corroborate this impression. Furthermore, it is reasonably foreseeable that the most perfunctory investigation would have revealed the nature of the mail delivery system in the Windsor area. Had this investigation been pursued then the appropriate instructions could have been given the applicant's secretary. (see The International Nickel Company Limited Case 62 CLLC ¶16,257)."

It took the applicants Business Agent to task for not making at least minimal inquiries to ascertain the nature of the mail delivery system and therefore did not discharge the "heavy onus" on it.

4. In this case Mr. Bloomfield did make inquiries before taking action. Based on information he received from the Postmaster at Preston he then personally delivered the letter to the Post Office at 1:00 p.m. rather than wait until 4:45 p.m., thus discharging the "heavy onus" contemplated by the Board.

5. I also wish to note that in the "Komoka Nursing Homes Limited" case the Board allowed the applicant to give evidence.

"Prior to mailing the pamphlets the applicant was assured by the postal authorities that since the pamphlets were mailed first class mail they would be delivered the following day, Friday, December 1."

The Board accepted this evidence and then concluded:

"5. Having considered all the evidence, we find that since the applicant had received assurances that first class mail mailed at the post office on Thursday, November 30 would be delivered the following day and especially since the postal authorities had two days to deliver mail to Rural Route No. 3, Komoka prior to the onset of the quiet period, that this case appears to fall within the principles established by the Board in the Addressograph-Multigraph of Canada Limited OLRB Monthly Report, October 1968, p. 752; Kralinator Filters Limited Case OLRB Monthly Report, August 1966, p. 312; and Waterloo County Health Association Case, OLRB Monthly Report, May 1965, p. 121. Accordingly, we find that the applicant took reasonable steps to ensure that the mailing of its propaganda would not contravene the Registrar's direction with respect to the quiet period. Since the case of Mr. Zecca appears to be an isolated instance of an employee receiving the propaganda after the onset of the quiet period, perhaps through no fault of the applicant since there was no evidence as to when the mail was delivered to the respondent's premises, we find that the delivery of the material to Mr. Zecca on December 5 is not sufficient reason to cause the Board to disregard the results of the representation vote in this matter."

6. I am now at a loss to understand why if in Komoka Nursing Homes Ltd. the Board ruled that actions taken based on assurances from the post office fulfilled the "heavy onus" obligation the same should not apply in this case.

7. Further the Board considered the case of Mr. Zecca as an isolated instance when 35 employees were concerned and it was not sufficient reason to disregard the vote. Now I ask why should 2 persons out of a list of 579 not also be considered an isolated case.

8. I would dismiss the charge that the respondent breached the silent period.

9. I agree with the conclusions of the majority expressed in paragraph 9 of their decision.



10. I would dismiss the applicant's contention that certain statements in the respondent's propaganda distributed prior to the vote prevented the employees from expressing their true wishes by secret ballot on December 6, 1974.

11. The evidence disclosed that an organizational campaign with the accompanying propaganda is nothing new to these employees. The company has had 18 organizational campaigns conducted by 8 different unions in the past 15 years. Three of these culminated in votes, the last being in September of 1972. This involved this applicant union.

12. Mr. J. Finkleman for the majority in Stauffer-Dobbie Manufacturing Co. Ltd. 59 CLLC ¶18,147 stated at page 1790;

"In determining the impact on the voters of the literature complained of, it is of course obvious that it is rarely, and perhaps never, possible to determine objectively what effect it has actually had. One cannot pay too much attention to either the most gullible voter or the one of firm convictions. One can only look at the circumstances of each case and, on the facts presented, determine whether the statements objected to are of such a nature that they are likely to have seriously misled a "reasonable" voter."

13. These employees have demonstrated by their past actions, their ability to make their own decisions even in the atmosphere of a paper war and it would seem to be presumptuous of the majority to find otherwise now.

14. Therefore, I would dismiss the request for a new vote and confirm the results of the secret ballot held December 6, 1974.

7348-74-JD: The Carpenters District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1747, 1963, 3227 and 3233 of the United Brotherhood of Carpenters and Joiners of America (Complainant) v. GRYD CONSTRUCTION INC., THE MANUFACTURERS LIFE INSURANCE COMPANY AND LOCAL 562, WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION (Respondents) v. Interior Systems Contractors Association of Ontario and The General Contractors' Section of The Toronto Construction Association (Parties added by the Board).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H.J.F. Ade and H. Simon.

APPEARANCES AT THE HEARING: Lennox A. McLean appearing for the complainant; R. C. Filion, J. McKenzie, and W. Carr appearing for Gryd Construction Inc.; A. M. Minsky and H. R. Weller appearing for Local 562; J. C. Murray and Ernie Benton appearing for Interior Systems Contractors Association of Ontario; B. W. Binning, R. A. Werry and Hector Stewart appearing for The General Contractors Section of The Toronto Construction Association.

DECISION OF THE BOARD: March 19, 1975.

1. The complainant has filed a complaint concerning work assignment and has requested that the Board issue a direction under section 81 of The Labour Relations Act.

2. The work in dispute is the installation of demountable and moveable partitions between the ceilings and floors, related millwork and trim, the installation of floor and ceiling runners, studs, insulation, shelf brackets, shelf studding, finished overings, factory precovered vinyl boards, drywall, laminated simulated wood and wood and cork panelling, drywall panels, woods, vinyl, rubber and metal baseboard, all backing material required for all surface mounted fixtures, the doors and door frames, and associated hardware therefore, and all other necessary associated work pertaining to the construction of the interior systems. This work is presently being performed by members of Local 562, Wood, Wire and Metal Lathers International Union at the project of The Manufacturers Life Insurance Company at 57 Bloor Street West, Toronto, on an assignment by Gryd Construction Inc. The complainant claims this work ought to be assigned to its members and requests an order from the Board to this effect.

3. Before the Board proceeded to hear the merits of this complaint, the complainant and Local 562, Wood Wire and Metal Lathers International Union (hereinafter referred to as "Local 562") each raised similar preliminary objections. The complainant objected to the status of the Interior Systems Contractors Association of Ontario (hereinafter referred to as "ISCA") to participate in this proceeding. Local 562 similarly objected to the status of The General Contractors' Section of The Toronto Construction Association (hereinafter referred to as "TCA") to participate in this proceeding.

4. Local 562 adopted the position that TCA has no direct or legal interest to intervene as a party and characterized a proceeding under section 81 of The Labour Relations Act as essentially a tripartite dispute involving an employer and two trade unions. However, counsel for Local 562 stated that the

Board has permitted owners of buildings to intervene because of a direct interest in such a proceeding. Local 562 stated that TCA is an accredited body for employers of employees for whom the complainant bargains in the industrial, commercial and institutional sector of the construction industry in the Board's geographical area #8. Counsel for Local 562 argued that this accreditation order was irrelevant to this proceeding since there were no employers of such employees involved in this complaint. Local 562 reasoned that since neither Gryd Construction Inc. (hereinafter referred to as "Gryd") nor Manufacturers Life Insurance Company (hereinafter referred to as "Manulife") has any collective bargaining relationship with the complainant, TCA has no representative status as agent for any employer.

5. Counsel for Local 562 referred to the interest of TCA as being merely commercial or incidental rather than direct or legal. He characterized TCA's interest as too remote to be recognized and stated that it rested on two contingencies, firstly whether the Board will make a direction in favour of the complainant, and secondly, assuming the first contingency is satisfied, whether the complainant subsequently secures bargaining rights for Gryd's employees.

6. Counsel for local 562 cited Moser v. Marsden [1892] 1 Ch. 487; Ottawa Separate School Trustees v. Quebec Bank (1917) 39 D.L.R. 118; and Westgate v. Sudbury Rand Mines Ltd. [1940] O.W.N. 258 in support of his proposition that a person who would be commercially and incidentally, but not legally and directly, injured by a judgment being obtained against a complainant or a respondent in an action, is not entitled, on the ground of prospective injury, to be made a party to an action. Counsel also pointed out that section 116(4) of The Labour Relations Act only comes into play when the complainant obtains bargaining rights for carpenters employed by Gryd.

7. Counsel for Local 562 pointed out that the accreditation order is not relevant even if the complainant prevails in this complaint. He concluded by arguing that third parties ought not to be permitted to plead on behalf of or assist another's case. He relied on Walterson & New Method Laundry [1955] 2 D.L.R. 776 and Cunningham Drug Stores Ltd. v. Retail Clerks Union et al 72 C.L.L.C. ¶14,147.

8. Counsel for TCA stated that it is the accredited bargaining agent for all employers of carpenters and carpenters' apprentices for whom the complainant has bargaining rights in the Board's geographic area #8 in the industrial, commercial and institutional sector of the construction industry by virtue



of a certificate which was issued by the Board on April 18, 1973. He referred to an earlier decision of the Board in the Ilena Construction Company Limited case, (1974) OLRB Rep. 775, where in a similar complaint proceeding the Board permitted the TCA to be added as a party because it was a party to an area collective agreement under which a complaining trade union claimed certain work should be performed. Counsel claimed that the work which is in dispute in the instant application ought to be performed under a collective agreement which is binding on the complainant. Counsel pointed out that the accreditation order was issued during the currency of this collective agreement and that in these circumstances this collective agreement has full status as the only collective agreement that any employer may enter into upon the complainant obtaining bargaining rights for an employer of carpenters and carpenters' apprentices in the Board's geographic area #8 in the industrial, commercial and institutional sector of the construction industry. The TCA was supported in its position by the complainant. Therefore, the TCA argued it ought to be permitted to participate fully in this proceedings since this collective agreement may be relied upon by the complainant and may require an interpretation by the Board.

9. Gryd and ISCA supported the position of Local 562 in objecting to the presence of the TCA at this proceeding.

10. ISCA, Gryd and Local 562 agreed that there is a collective agreement between Local 562 and Gryd and that this collective agreement is identical in form to the collective agreement between ISCA and Local 562. ISCA and Gryd also informed the Board that Gryd is not a member of ISCA. However, Local 562 conceded that in its view ISCA in these circumstances may only speak to the form of its collective agreement with Local 562 and may not participate generally in this proceeding. It appears to the Board that Local 562 is proposing that ISCA be regarded as a party in this proceeding for a limited purpose. ISCA informed the Board that it is not an accredited bargaining agent.

11. The complainant and the TCA argued that ISCA does not have status to intervene in this proceedings because Gryd is not a member of ISCA.

12. While TCA and ISCA may not have such an interest as contemplated by the courts, they do, in our view, have a very real interest when jurisdictional disputes are considered in the arena of labour relations. Such disputes which may normally affect only one employer and two trade unions nevertheless have tremendous repercussions for other employers and

associations of employers which operate in the field of work which gave rise to a jurisdictional dispute.

13. While it may be true that the addition of parties to this complaint will tend to lengthen this proceeding, it is also true that a well presented complaint proceeding in which a direction is issued by the Board after the fullest presentation of fact and argument is more likely to lead to compliance with the direction by employers and trade unions which are not parties to this proceeding.

14. There remains to be considered whether ISCA and TCA ought to be made full parties to this proceeding or whether they ought to be made parties for a limited purpose. The Board is of the opinion that once a party has been made a party to a proceeding it ought to be allowed to participate fully in such a proceeding and to be made a party for all purposes. In any event, the complexities of a jurisdictional dispute are such that it may well be a difficult question in determining whether certain evidence and representation is or is not directly or indirectly related to the collective agreements which ISCA and TCA rely upon and which they desire to put forward in this proceeding.

15. By virtue of section 54 of the Board's Rules of procedure, the Board may direct that any person be added as a party to a proceeding or be served with any document as the Board considers advisable. In our view the addition of ISCA and TCA as parties to this proceeding would contribute to the advancement of a resolution of this complaint. Accordingly, the Board hereby directs that ISCA and TCA be and they are hereby added as parties to this proceeding.

16. The Registrar is directed to list this matter for continuation of hearing.

6573-74-M: United Cement, Lime & Gypsum Workers International Union, Local 487, AFL-CIO-CLC (Applicant) v. GENERAL CONCRETE OF CANADA LTD. (Respondent) v. J. Chappell, et al (Intervenors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES AT THE HEARING: P. Cavalluzzo and D. Burshaw for the applicant; A. J. Clark, Q.C., and J. E. Gammage for the respondent; D. L. Brisbin for the interveners.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER E. BOYER:  
March 24, 1975.

1. This is an application under section 95(2) of the Act where the question referred to the Board is whether certain persons are employees for purposes of the Act. The issue raised is whether these persons who have a contractual relationship with the respondent are independent contractors or employees.

. . .

3. The respondent is in the business of the production, distribution and supply of concrete blocks and other like materials to customers in the Hamilton-Wentworth area. In carrying on its business the respondent employs its own truck drivers as well as engaging drivers on a contractual basis to deliver its product to the customer. The latter, of course, form the subject matter of the instant dispute.

4. There is no written arrangement between the drivers and the respondent. Terms are negotiated from time to time en bloc between representatives of the drivers and representatives of the respondent. Each driver suggested by virtue of his relationship with the respondent that he was a self-employed businessman engaged in the trucking business. A number of them indicated that their principal source of revenue was attributable to business generated through the respondent. Others such as Messrs. VanEs, Van Ryan and Billings, performed cartage services for other customers or engaged in alternate business pursuits. The drivers are paid on a bi-weekly basis once having billed the respondent after the completion of a particular job. The rate of remuneration is on a ton-mileage basis applicable to each driver. The oral arrangement appears terminable by either party without notice. No income tax, unemployment insurance, medical, pension or workmen's compensation deductions are made from the pay envelope. Only amounts charged with respect to gasoline and other materials purchased from the respondent are deducted. Each appears to have adopted appropriate bookkeeping procedures with respect to meeting the various and sundry statutory obligations. In this regard, each takes advantage of capital depreciation allowance on his truck and other capital equipment in the filing of income tax returns.

5. The trucks are purchased in accordance with the respondent's specifications. Some drivers own several



trucks while others drive the one truck they own. In some instances the trucks are owned outright by the driver. In most instances the trucks are financed through a lending institution selected by the driver or through a lease arrangement with the truck dealer where the respondent acts as guarantor. In the latter instance, in the event of default by the driver in making the necessary payments he is required to assign his interest in the lease to the respondent. Trucks are often purchased in bulk in order to take advantage of a dealer's fleet rates. In such instances, a representative of the respondent after consulting with the drivers will negotiate the ultimate purchase. The driver must also purchase a "boom-loader" which is employed to lift cargo on and off the truck. The estimated value of the truck and equipment approximates \$40,000 to \$50,000.

6. Motor registration and insurance for truck and equipment are the driver's responsibility. Each driver secures in his own name the necessary P.C.V. licence. In most instances the licence is restricted to carrying concrete blocks for the respondent. In the case of Mr. Van Ryan his P.C.V. licence appears without restriction; and in the case of Mr. J. Chappell his licence permits the haulage of materials for several of the respondent's competitors. The drivers must incur the costs of maintaining and servicing their vehicles. Gasoline on most occasions is purchased from the respondent at a premium rate.

7. The drivers wear uniforms bearing the respondent's logo. The driver is not compensated in the way of advertising for painting the trucks and bearing the respondent's insignia. There is little to differentiate the drivers' responsibilities in an operational sense from that of the employee driver. The respondent does take some measures to avoid congestion in its yard by scheduling the arrival of employee drivers before that of the drivers under contract. In all other respects the drivers report to the shipper, receive their instructions, line up for a load and proceed to deliver their cargo as instructed. The process is repeated, if work is available, during the course of a day. There is no radio communication system connecting the driver to a dispatcher during the course of delivery.

8. The drivers indicated they are not obliged to work exclusively for the respondent. There is no pretence amongst them however that work from the respondent is their principal source of revenue. This in turn affects the drivers availability to perform services on the respondent's behalf. There is some evidence suggesting that the drivers' haul blocks for the respondent's

competitors but generally on a very isolated and infrequent basis. In other instances drivers would lend their services out for transporting soil or the carting of materials on a part-time basis. The driver may elect to show up for work as he pleases, take vacations when he wants and regulate the number of hauls performed per day. Underlying this apparent independence is the drivers' obvious concern for reliability of service on pain of termination by the respondent of their oral arrangement. When the driver does take a vacation it usually is geared to the slack season or arrangements are made that a substitute use his truck. In this context the words of Mr. Gammage appear to express the true nature of the relationship,..."we would withdraw business from them because of lack of service to our customers".

9. Counsel appear agreed that "the four-fold" test cited by Lord Wright in The Montreal v Montreal Locomotive Works Limited Case [1947] 1 D.L.R. 161 (PC) at p. 169 is representative of "the state of the law" in applying criteria distinguishing the employer-employee relationship from that of the independent contractual arrangement. The particular issue facing the Board was recently canvassed in The Livingston Transportation Limited Case OLRB M.R. May 1972 488 where the Board was required to apply the four-fold test to "the independent driver arrangement". The Board does not propose to depart from the guidelines established in that case in resolving the issues presently before us.

10. Counsel for both the respondent and the interveners made several submissions to the Board which deserve particular mention. It was argued that the Board adopt an "all or nothing approach" with respect to the disposition of the nine persons whose status is disputed by the parties. We note however that there was no agreement by the parties in selecting one person as representative of all the disputed individuals named by the applicant and examined by the Examiner. In absence of such agreement the Board is simply constrained from reaching one conclusion based on a composite view of each of the disputed drivers. In other words, we must deal with the issue on an individual basis having regard to the facts and circumstances of each case.

11. Counsel for both the respondent and the interveners also argued that the applicant should be estopped from disputing the status of these drivers in absence of a challenge to their status since the date of issuance of a Board certificate conferring bargaining rights on December 17, 1970. During this period of time it is alleged that ample opportunity has arisen at negotiations for raising this particular issue

We note however that no such objection was taken by either counsel at the time of receipt of notice of the applicant's application. We are of the view that the appropriate time to have raised this particular issue was before the authorization by the Board of an Examiner's Inquiry into the merits of the dispute. Surely after the time and expense incurred by all the parties to the instant proceedings in participating in that inquiry, it does not lie in the mouth of one or either of them to raise a collateral matter precluding a determination on the merits. In other words, any objection to this application available to counsel has been waived.

12. The Board in resolving the issue has attempted to determine the question as to whether the persons surveyed are businessmen. In doing so we have refrained from questioning whether some of the measures adopted by these drivers are sound decisions infused with a business purpose. We have also refrained from assessing the business advantage to the respondent in dealing with these drivers on an independent contractual basis as opposed to a master-servant relationship. What the Board has addressed itself to is the question as to whether these persons are employees for purposes of the Act. In asking that question the Board became somewhat concerned with the language applied in some of our past decisions with respect to the adherence or otherwise to other statutory exigencies by the parties to a particular contractual arrangement. We find nothing inconsistent with a finding that a person is an employee for purposes of The Labour Relations Act and continued entitlement by that person to a variety of benefits under other statutes. In this regard a person although an employee may be in a state of becoming an independent businessman at some future date as his growth evolves. For example, he should not thereby, (because of a contrary decision by this Board) be prejudiced with respect to capital cost allowance on depreciating assets for purposes of The Income Tax Act. In a like manner the Board does not necessarily mean to hold that "the employer" has violated the provisions of other statutory regulations where he fails to deduct payments for income tax, unemployment insurance or Canada Pension, etc. etc., from the employees' pay cheque. These are matters that are reserved to the various regulatory bodies created pursuant to these statutes. In other words, a decision by this Board on the employment status of a particular person is without prejudice to benefits accrued and obligations surrendered for other purposes that



are of no immediate concern to us. We only look to these factors as indicia that may or may not confirm a particular conclusion.

13. The position taken by both respondent and intervener is that the persons in dispute are engaged in the haulage business. The applicant submits that these drivers are indeed employees and should be treated as such for purposes of the Act. The essence of operating a business is holding out to a market society the availability of goods and services at the best possible price having regard to competing pressures exacted upon a particular market. It seems patently obvious to this Board that a particular business will not flourish in circumstances where growth is totally integrated with the operations of a particular customer. The essence of resolving and distinguishing the contractor from the employee is his independence. There is no dispute that the respondent is the major if not the exclusive customer of many of the drivers. In some instances, the most essential asset to the operation of the business, i.e. the truck, is tied to the respondent as guarantor under the leasing arrangement. And where the trucks are financed by the driver from a lending institution his source of continued support is dependent upon the "good will" of the respondent. In instances where the driver's means of continued financial support is inextricably bound up with the respondent we are of the view that he cannot be considered an independent contractor. This may be reflected further in the driver's propensity to hold himself out as the agent of the respondent as evidenced by the indicia of the uniform and truck bearing the respondent's insignia to limitations as evidenced by the P.C.V. licence or a dependency on the respondent to negotiate the purchase of his truck. For these reasons the Board concludes that Messrs. Hardie, Catherwood, Black, Hyslop and K. Chappell are employees for purposes of the Act.

14. On the other hand where the evidence indicated that a particular driver exhibited a capacity to diversify and widen the scope of his affairs although maintaining an obvious concern for servicing the respondent, the Board was satisfied of the establishment of business relationship. Thus in the case where several trucks are owned by a particular person and he engaged his own drivers to service the respondent or applies his assets to a collateral business pursuit then we find that that particular person is an independent contractor.

In essence we are of the view that in such instances these persons would be in a position to carry on their businesses notwithstanding the relationship established with the respondent. In other words, the control of the contractors financial destiny in varying degrees has been extricated from the exclusive patronage of the major consumer of the service. in this regard, we find that Messrs. VanEs, Van Ryan, J. Chappell and E. Billings are independent contractors.

15. The Board, in reaching the conclusion that the persons named in paragraph 13 herein are employees for purposes of the Act, wishes to emphasize that we express no opinion as to whether these persons are employee members of the bargaining unit described in the collective agreement between the applicant trade union and the respondent.

DECISION OF BOARD MEMBER J. D. BELL: March 24, 1975.

I disagree with the decision of the majority that Messrs. Hardie, Catherwood, Black, Hysop and K. Chappel are employees for purposes of the Act. It is my opinion that these persons meet the stringent guidelines established in The Livingston Transportation Limited Case OLRB M.R. May 1972 488 that apply to the test of "the independent driver arrangement". I cannot separate the above five persons from Messrs. VanEs, Van Ryan, Billings and J. Chappell.

I find all nine are independent contractors.

6642-74-R: Dorothy Hall (Applicant) v. Local 280 of the International Beverage Dispensers' & Bartenders' Union of the Hotel and Restaurant Employees' and Bartenders International Union, A.F. of L., C.I.O., C.L.C. (Respondent) v. KILGORAN HOTELS LIMITED CARRYING ON BUSINESS AS YE OLDE BRUNSWICK TAVERN (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members F. W. Murray and H. Simon.

APPEARANCES AT THE HEARING: D. Hall and B. Midanik for the applicant; J. A. Ryder and J. Troll for the respondent; S. C. Bernardo and A. Nightengale for the intervener.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER F. W. MURRAY: March 24, 1975.

1. This is an application filed under section 49(2) of the Act for termination of the respondent's bargaining rights. At the material time of the application the respondent trade union and the intervener employer were parties to a collective agreement whose scope clause reads as follows:

Article 2 - SCOPE

2.01 This Agreement applies to all full-time and part-time male and female employees employed in the beverage departments in the licensed establishments listed on Schedule "G" attached hereto, as tapmen, bartenders, beverage waiters, (including waiters who operate automatic beer dispensers or other automatic dispensing equipment), bar boys and improvers and any other new classification relating to the serving of alcoholic beverages.

2. The intervener operates two beverage rooms at its hotel premises in Metropolitan Toronto. The Main beverage room is located in the downstairs portion of the hotel and the second room is upstairs on the second floor and known to the intervener's clientele as "Albert's Hall". Except for Mrs. Hall, full-time employees are assigned to work in the main beverage room; and, part-time employees (i.e. those regularly employed for 16 hours per week or less) are assigned to the upstairs beverage room. Although part-time employees are properly members of the bargaining unit the evidence indicates that of the five part-time employees appearing on the schedules filed by the intervener none of them signed the statement indicating opposition to continued representation by the respondent trade union. Of the remaining fifteen employees engaged in a full-time capacity, each indicated a desire to get rid of the respondent as his bargaining agent.

3. Mrs. Hall was called upon to adduce evidence with respect to the origination, preparation and circulation of the statement of desire. She has been employed by the intervener for the past four years as a waitress in the main beverage room. In late May 1974, after Mr. Cliff Baxter was discharged, she was assigned to the upstairs beverage room where she assumed the duties and responsibilities of a "head waitress". The evidence indicated that Mrs. Hall performed a number of functions that may accurately be characterized as supervisory in nature. Without describing these functions in great detail we are satisfied that



Mrs. Hall was responsible for assigning waiters their tables, for recording and verifying the amount of beverage served by each of them, for assuring the room was sufficiently provided with alcoholic beverages, for dealing with unruly clientele and for generally concerning herself with the smooth operation of "Albert's Hall". Mrs. Hall indicated she was not authorized to hire or fire employees. Nevertheless, she attributed these added responsibilities to her regular duties as a waitress to her experience and her seniority in the intervener's service.

4. The evidence adduced before us establishes that the part-time employees assigned to the upstairs beverage room would likely view Mrs. Hall as their boss. The testimony of Miss Odette Levesque is particularly relevant to this finding. Miss Levesque at the material time of the preparation and circulation of the statement of desire was employed in a part-time capacity and was assigned the job of serving liquor and other mixed drinks to clientele in Albert's Hall. She was the only waitress responsible for serving liquor. The other waiters served beer to customers in sections of the room assigned to them by Mrs. Hall. At the end of the evening shift on Saturday October 11, 1974 Mrs. Hall approached Miss Levesque indicating that the manager, Len Martindale, had noticed shortages in monies submitted by her that were attributed to a failure to account for a number of bottles of soda pop. Miss Levesque was infuriated by the pettiness of the request and insisted on confronting Mr. Martindale directly. A heated discussion ensued with Mr. Martindale which resulted in the realization by Miss Levesque that her job was in jeopardy. She thereupon indicated to Mrs. Hall that she would phone her the following Monday to ask if she still had the job. When the phone call was made Mrs. Hall confirmed that her services were no longer required. Mrs. Hall nonetheless offered her name as a reference in the event that became necessary in finding another position.

5. Miss Levesque could not pinpoint the individual ultimately responsible for her discharge. Nevertheless based on the circumstances recited to us the Board is satisfied that Miss Levesque's discharge was effected by Mr. Martindale and Mrs. Hall was the vehicle through whom that message was relayed. We further find little (save in emphasis) to differentiate the testimony of Mrs. Hall from that of Miss Levesque with respect to the scope and nature of the duties and responsibilities performed by Mrs. Hall. As a result we are satisfied that the duties performed by Mrs. Hall fall short of the exercise of managerial functions for purposes of section 1(3)(b) of the Act. The Board is satisfied that Mrs. Hall was employed in a supervisory capacity with respect to the part-time employees assigned to serve tables in "Albert's Hall". And in this regard Miss Levesque's testimony supports the finding that she viewed Mrs. Hall as her immediate supervisor.

6. Mrs. Hall stated that in the summer of 1974 she sought the advice of a law student who was employed as a part-time waiter in "Albert's Hall" with respect to the necessary procedures required to terminate the bargaining rights of the respondent union. She then prepared a statement of desire and proceeded to circulate it amongst the intervener's full-time employees. Mrs. Hall told the Board that "The Brunswick" over the years has become her second home. She often shows up for work to socialize with her colleagues or to simply watch television. It was during this period as employees left the afternoon shift or arrived for the evening shift that many of the signatures were secured. She also stated that a number of the signatures were secured during employee break periods. Mrs. Hall indicated that none of the part-time employees were approached to sign the document. Miss Levesque and Mr. Russel Mokriy, who were employed on a part-time basis, gave evidence on the respondent's behalf. They both confirmed that part-time employees were not approached by Mrs. Hall to sign the petition. Moreover, Miss Levesque told the Board she did not learn that she was represented by the respondent as a member of the bargaining unit until October 1974, after her discharge had been effected. Mrs. Hall offered no explanation for failing to approach the part-time employees except to say that they did not appear to her to share with other employees the general opposition to continued representation by the respondent. Mrs. Hall identified fourteen of the fifteen signatures appearing on the document that she was responsible for securing.

7. In September 1974, Mrs. Hall went on a two week vacation. She related that she left the petition in the hands of Ann Osborne. Upon her return she retrieved the document from Miss Osborne. She indicated that Ann Osborne was responsible for securing the one signature that she could not personally identify. Although called upon by counsel Miss Osborne was unavailable to adduce evidence with respect to her role in the circulation of the petition. The document was eventually taken by Mrs. Hall to the office of counsel who prepared the application form and mailed the documents to the Board.

8. There were several submissions made by the respondent questioning the voluntariness of the statement of desire filed in support of the instant application. Firstly, the argument is made that the signatures to the petition were obtained on the employer's premises during working hours. Mrs. Hall's testimony, however, was not contradicted with respect to the measures taken by her to avoid the very allegation made by counsel. There was no evidence adduced by the respondent indicating that at the relevant time of the circulation of the petition it was accomplished with the knowledge and consent of the employer. In any event, counsel admitted to the Board that

this allegation in itself, would not necessarily be fatal to the application. The Board agrees with this latter assertion. In absence of evidence implicating the intervener directly or indirectly in the securing of the signatures to the statement of desire, we are not prepared on this ground to find a doubt has been cast on the voluntariness of the document. (See; The Parker's Dye Works and Cleaners Limited Case OLRB M.R. December 1974 859).

9. The second submission argued by counsel related to the failure by the applicant to adduce first hand evidence of the disposition of the document during the two week period when Mrs. Hall was on vacation. The uncontradicted evidence indicates that Mrs. Hall placed the document in Ann Osborne's possession when she left for her vacation and secured the document from the same Miss Osborne upon her return. There is no evidence before the Board that Miss Osborne is employed in a managerial capacity or could otherwise affect the validity of the document by virtue of her employment status. In this regard Miss Osborne is listed on the schedule of employees who are members of the bargaining unit represented by the respondent trade union. In the past the Board has set aside petitions where there is a gap in the custody of the document in such circumstances where we have been deprived of direct evidence of preparation of the petition, of the securing of signatures on the petition, and of a failure to account for the arrival of the petition at the Board's offices. (See; The Formosa Spring Brewery Case OLRB M.R. October 1974, 696; The Vered and Harvey Limited Case OLRB M.R. November 1971 1736; The Willow Press Limited Case OLRB M.R. February 1971 59). In the instant case, the Board has been deprived of first hand evidence of the signature allegedly secured by Miss Osborne. As a result in accordance with our past policy considerations, the Board is not prepared to attach any weight to the one signature that could not be accounted for by direct testimony. We note, however, that the remaining fourteen signatures were secured by Mrs. Hall before she departed for her vacation and therefore remain unaffected by counsel's second submission.

10. The third argument put forward by the respondent pertains to the involvement of Mrs. Hall in assuming the principal role of originating and circulating the statement of desire. We have heretofore found that Mrs. Hall does not exercise managerial functions for purposes of S1(3)(b) of the Act. Nevertheless the Board is satisfied by virtue of her position as "head waitress", Mrs. Hall is employed in a supervisory capacity. In short, Mrs. Hall performs duties and responsibilities that can best be analogized to the "lead hand"



or working foreman in other employment settings. We are therefore confronted with the issue of whether the petition is tainted by reason of the application by the Board of "The Link Principle" to the circumstances described herein. In the past in situations where the person responsible for the origination and circulation of a petition is employed in a capacity where limited managerial or supervisory functions are exercised and is known by the employees in the bargaining unit to be capable of affecting their employment relationship, the Board has determined that the true and voluntary wishes of employees signing the petition would not have been reflected. (See; The Link Manufacturing Ltd. Case OLRB M.R. (1954) File No. 48682-53-R; Leamington Vegetable Growers' Co-Operative Limited Case OLRB M.R. June 1974, 402).

On the other hand where the person responsible for the petition exercises these managerial or supervisory functions but are not viewed by employees as affecting their employment status, then the Board will give credence to the petition. (See; The Kayson Rubber Limited Case 58 CLLC ¶18,128; The Fortier Beverage Limited Case OLRB M.R. September 1970 650). The essential factor weighed by the Board are the concerns of employees who have been approached to sign the petition in relation to the potential threat to their job security should they refuse to accede to the request.

11. The evidence adduced before us establishes that Mrs. Hall is properly a member of the bargaining unit described in the scope clause of the collective agreement referred to in paragraph 1 herein. The evidence further establishes that she is employed in a supervisory capacity and probably viewed by employees over whom supervisory functions are exercised as their boss. Nonetheless the evidence as adduced through Miss Levesque and Mr. Mokriy clearly establishes that these employees were not in the least affected by Mrs. Hall's role in initiating these proceedings. Both witnesses were subpoenaed by the respondent and testified that they were part-time employees assigned to "Albert's Hall" and at the material time of the circulation of the petition were not approached by Mrs. Hall. Furthermore Miss Levesque indicated that she was not aware of the respondent's existence as her bargaining agent until October, 1974, long after the circulation of the petition had been completed. There was no direct evidence adduced before us to show that the employees who were approached by Mrs. Hall, to sign the petition viewed her as being couched with the authority to affect their status as employees. In this regard we note that counsel for the respondent subpoenaed many of the full-time members of the bargaining unit to attend the Board hearing. None of these employees who signed the petition and who were in a position to testify were called upon to express their views on Mrs. Hall's

role in these proceedings. We therefore find that an essential ingredient justifying the application of The Link Principle is lacking. In other words, the Board is satisfied that the voluntary wishes of the employees who signed the statement of desire indicating opposition to continued representation by the respondent union were unaffected by Mrs. Hall's participation in the origination and circulation of the document. Furthermore we are of the view that the disposition of the instant case is more consistent with the facts and circumstances described in The Kayson Rubber Limited Case (supra) at p. 1751.

12. We are therefore satisfied that not less than 50 per cent of the employees of Kilgoran Hotels Limited carrying on business as Ye Olde Brunswick Tavern in the bargaining unit, at the time the application was made, had voluntarily signified in writing that they no longer wish to be represented by the respondent trade union on October 29, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining the number of persons who have voluntarily signified in writing that they no longer wish to be represented by the respondent under section 49(3) of the Act.

13. The Board directs that a representation vote be taken of the employees of Kilgoran Hotels Limited carrying on business as Ye Olde Brunswick Tavern. Those eligible to vote are all full-time and part-time male and female employees employed in the beverage departments of the Kilgoran Hotels Limited carrying on business as Ye Olde Brunswick Tavern in Metropolitan Toronto, as tapmen, bartenders, beverage waiters, (including waiters who operate automatic beer dispensers or automatic dispensing equipment), bar boys and improvers and any other new classification relating to the serving of alcoholic beverages on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken.

14. Voters will be asked to indicate whether or not they wish to be represented by the respondent in their employment relations with Kilgoran Hotels Limited carrying on business as Ye Olde Brunswick Tavern.

15. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER H. SIMON: March 24, 1975.

I would have dismissed the petition on the following grounds:

Dorothy Hall who was responsible for initiating the petition for de-certification and obtained 14 of the 15 signatures on the petition, is employed in a supervisory capacity.

I cannot agree with the reasoning of the majority that the employees who had signed the petition did not view her position as having any effect on their employment status. While it is true that she was performing supervisory functions in one section of the Hotel there can be no doubt that the rest of the employees in other parts of the establishment knew of her position and were undoubtedly influenced by her in their action to sign the petition. Even if the signatures had been obtained by some other person, the fact that the petition has been prepared by a supervisor should be sufficient ground for its dismissal.

7081-74-R: Ontario Nurses' Association (Applicant) v. ST. PETER'S HOSPITAL - HAMILTON (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and O. Hodges.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER O. HODGES:  
March 27, 1975.

1. This is an application for certification for a group of nurses employed by the respondent hospital in direct nursing care.
2. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.
3. The area of dispute between the parties to the instant application is resolving the managerial line of exclusion from the appropriate bargaining unit. The applicant proposed that the line be drawn at the Director of Nursing. The respondent replied by proposing that the head nurse (including night supervisor) be excluded having regard to the provisions of section 1(3)(b) of the Act. In dealing with this particular issue, the Board notes the agreement of the parties that Mrs. Mr. Cunningham be treated as representative of the duties and responsibilities of the persons in dispute.
4. Mrs. Cunningham is classified by the respondent as a head nurse responsible for a particular hospital ward. Her immediate supervisor is Mrs. E. Rowles, Director of Nursing.



Mrs. Cunningham has been employed in this capacity since 1969. She works the day shift from 7:00 a.m. to 4:30 p.m. In the event she works overtime she receives no compensation but is entitled to cumulative time off from her regular shift proportionate to the number of extra hours worked. As head nurse, Mrs. Cunningham indicated there are approximately twenty-nine employees under her supervision comprising five regular nurses, eighteen registered nursing assistants and six nurses aides. A routine day requires Mrs. Cunningham to assure herself that work assignments have been properly delegated and those employees responsible for particular patients are performing their duties as instructed. It appears that work assignments are delegated by registered nurses on the ward described by Mrs. Cunningham as "team leaders". Each day these "team leaders" prepare schedules assigning work to designated employees. Mrs. Cunningham checks that the work allotted is being performed and that no difficulties have been encountered. Each "team leader" prepares a report at the end of the day indicating problems with respect to servicing patients. Staff meetings are arranged where these problems are discussed and presumably resolved. Mrs. Cunningham co-ordinates staff meetings, schedules inter-departmental operations affecting the ward and takes measures to maintain continuity between shifts. She, in conjunction with the team leader, attends to problems with a patient's family and will assist doctors on the ward in the event that the nurse responsible is preoccupied or otherwise unavailable.

5. Mrs. Cunningham neither hires nor fires. She may grant an employee a few hours off work to attend to personal matters but only after assuring herself that relief help is available. She has no authority to grant an employee a day off. In the event an employee fails to arrive at work she will arrange for a replacement from a rostrum of available relief employees. She does not reprimand for lateness although an explanation is expected for inordinate unpunctuality. She has had occasion to suspend in the event an employee arrives at work drunk. A report is then prepared for Mrs. Rowles information when determining a more permanent penalty. Mrs. Cunningham recently has been told she will be participating in the hiring process by attending the interviews of prospective employees. She has yet to attend such interviews nor has she recommended the hiring of an employee. She is responsible for preparing assessments for employees on her ward. These assessments include both the nurses and registered nursing assistants. The latter are represented for collective bargaining purposes by The Canadian Union of Public Employees. Employees on probation are not only assessed with respect to their work performance but their capacity to get along with other employees is emphasized. More specifically in dealing with registered nurses particular concern is placed on a potential for becoming a "team Leader". Permanent employees are subjected to an annual evaluation by Mrs. Cunningham. This particular assessment is conducted in consultation with other

nurses on the ward. The employee is given the opportunity to see the assessment and may elect to sign it. In the event she does not agree with an assessment the matter is pursued further with Mrs. Rowles. Save for performing a follow up assessment to measure a particular employee's improvement, Mrs. Cunningham had no further involvement with the status of that employee. Mrs. Rowles is responsible for taking appropriate measures from data contained in the assessment reports and without consultation or recommendation from Mrs. Cunningham. In this regard, Mrs. Cunningham does not attend management meetings where labour relations matters are discussed.

6. In the recent Toronto East General and Orthopaedic Hospital Inc. Case OLRB M.R. October 1974 671, the Board reviewed and consolidated many of the Board's past determinations dealing with the problem of defining the parameters of managerial functions in a hospital setting. In a word, the complexities exerted upon the decision making process by the reliance of hospital management on technical information provided by employees who perform professional functions to a great extent has blurred the demarcation line of the exercise of managerial functions. Nevertheless what can be discerned in attempting to pinpoint the exercise of traditional managerial prerogatives in this particular white collar setting is that the mere exercise of professional skills by an employee and the interaction of these skills with other employees in the bargaining unit will not necessarily deprive that employee of rights of representation for collective bargaining purposes. The Board's task in determining the managerial issue is the examination of the duties and responsibilities of disputed persons to ascertain whether a conflict of interest exists with bargaining unit employees that would nullify their effectiveness should they be placed in the bargaining unit. The Board has discerned from studying this issue in context of the head nurse, the charge nurse, and the assistant head nurse that these persons are often employed in a setting where functions are exercised in co-ordination with the activities of other employees holding a variety of responsibilities and possessed with the necessary education and training to discharge those responsibilities. The objective of course, in co-ordinating these functions is with a view towards the continued well being and eventual cure of the patient. It is therefore quite meaningless to speak in terms of a conflict of interest amongst employees in the bargaining unit where the principal function of the head nurse is the assurance of harmony amongst employees in a hospital ward. Indeed, conflict in job performance may very well be the antithesis of the "team approach" adopted in a particular hospital setting having regard to the degree of professionalism exhibited and necessary for the well being of the patient.

7. In this case, the evidence indicates that there is no job conflict between the duties and responsibilities of the head nurse with the functions of other employees in the respondent's hospital wards. The information provided by Mrs. Cunningham as the representative of the disputed head nurses indicates that her responsibilities are geared towards the smooth operation of the ward assigned to her. The assignment of work is done by "team leaders" who may or may not consult the head nurse. Each day, staff meetings are held to discuss reports prepared by the "team leaders" with respect to patient or other allied problems. Assessments are made on probationary employees by the head nurse with the general objective of determining whether they get along with the other employees on the ward. More particularly in assessing registered nurses particular emphasis is placed on the potential of becoming team leaders. Assessments are also made on permanent staff by the head nurse. These assessments however are made in consultation with other members of the ward staff where they may participate in the ultimate report.

8. The evidence does indicate that Mrs. Cunningham performs some functions that may be accurately characterized as supervisory in nature. Even so, when these functions are exercised they appear to be in context with the smooth operation of the ward and an overriding concern for patient care. She does not reprimand an employee for their misdeeds. An explanation for lateness however is expected and is received by the head nurse. She also may grant a few hours off provided no problem is created in the servicing of patients. Anything longer than this requires the permission of the Director. Failure by an employee to show up for work will cause the head nurse to make certain that a replacement is secured. The assessment reports prepared by the head nurse are dispatched by her to the Director of Nursing. She makes no recommendation with respect to what action should be taken as a result of a report. Disagreement with the results of a report must be taken up by an aggrieved person with Mrs. Rowles. The head nurse does not exercise any effective control over the future employment status of any person in her ward. Indeed she does not attend meetings of management where labour relations matters are discussed.

9. The head nurse indeed would be in conflict with other ward employees should she exercise the managerial functions manifestly exercised by the director of nursing. It appears obvious from the evidence that the concept of the "team approach" to patient care adopted by the respondent hospital could very well be compromised in the event that Mrs. Cunningham performed the managerial duties of the Director of Nursing. The evidence



is clear that all facets of the decision making process directly related to the employment status of ward employees are assumed by Mrs. Rowles. This is clearly indicated in the evidence where Mrs. Cunningham stated that the Director of Nursing is the ultimate judge in the disposition of assessment reports prepared by her. This was also illustrated in context of the head nurses powers to reprimand. Should an employee arrive at work in drunken state the head nurse would send her home. After doing so, she would then file a report with Mrs. Rowles who would be ultimately responsible for taking more permanent measures. Clearly the pervasive impression left with this Board is that in defining the appropriate bargaining unit the managerial line of authority is to be drawn at the office of the Director of Nursing. We therefore find that Mrs. M. Cunningham does not exercise managerial functions within the meaning of section 1(3)(b) of the Act.

10. The Board received written representations from the respondent dated February 28, 1975 where it is indicated that the hospital is presently in the process of expansion that will in the near future require widening the scope of the duties and responsibilities performed by its head nurses. The submission is made that the Board take this into account in reaching a conclusion on the managerial issue. In answer to this submission, the Board may only make rulings on evidence before us as of the date of the filing of an application. In the event that the duties and responsibilities of head nurses change in the near future then a remedy is available to the respondent under S95(2) of the Act.

11. The Board therefore finds that all registered and graduate nurses employed by St. Peter's Hospital, Hamilton, Ontario, in a nursing capacity save and except Director of Nursing and persons above the rank of Director of Nursing, constitute a unit of employees of the respondent appropriate for collective bargaining.

12. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on January 6th, 1975, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

13. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER J. D. BELL: March 27, 1975.

I disagree with the majority that the managerial line of authority is to be drawn at the Director of Nursing. It is impractical and unreasonable to find one individual to be the only person that exercises managerial functions over a staff of 120 covering the 24 hour day in a chronic care Hospital.

Mrs. Cunningham is directly responsible for the performance of some 28 persons under her supervision and is accountable for the operation of her area. How can she carry out these responsibilities without exercising managerial functions within the meaning of section 1(3)(b) of the Act?

Therefore, I would find that all registered and graduate nurses employed at St. Peter's Hospital, Hamilton, Ontario, in a nursing capacity save and except Head Nurses and persons above the rank of Head Nurse constitute a unit of employees of the respondent appropriate for collective bargaining.







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7029-74-R: International Brotherhood of Painters and Allied Trades - Local Union 1891 (Applicant) v. Halton Drywall Limited (Respondent) v. Marble Masons, Tile Layers, Terrazzo Workers Union 31, Affiliated with the Bricklayers, Masons & Plasterers International Union of America (Intervener).

Unit #1: "all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and persons covered by a collective agreement between the respondent and the Wood, Wire and Metal Lathers' International Union, Local 562 dated May 1, 1974." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (HAVING FURTHER REGARD TO THE AGREEMENT OF THE PARTIES AND FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT PLASTERERS ARE EXCLUDED FROM AND THAT DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT DEFINED IN PARAGRAPH #12 herein.).

Unit #2: "all plasterers and plasterers' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and persons covered by a collective agreement between the respondent and The Wood, Wire and Metal Lathers' International Union, Local 562 dated May 1, 1974." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (HAVING FURTHER REGARD TO THE AGREEMENT OF THE PARTIES AND FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRYWALL TAPERS ARE NOT INCLUDED IN THE BARGAINING UNIT DEFINED IN PARAGRAPH #16 HEREIN.).

7081-74-R: Ontario Nurses' Association (Applicant) v. St. Peter's Hospital - Hamilton (Respondent).

Unit: "all registered and graduate nurses employed by St. Peter's Hospital, Hamilton, Ontario, in a nursing capacity save and except Director of Nursing and persons above the rank of Director of Nursing." (31 employees in the unit).

(1975) 2 OLRB M.R. - PAGE 247.

7164-74-R: Local Union 2345 International Brotherhood of Electrical Workers A.F.L. C.I.O. C.L.C. (Applicant) v. Mitten Industries Galt Limited (Respondent) v. Group of Employees (Objectors).



Unit: "all employees of the respondent at Cambridge (Galt), Ontario, save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than 24 hours per week, and students employed during school vacation periods." (73 employees in the unit).

(1975) 2 OLRB M.R. - PAGE 154.

7185-74-R: Ontario Nurses' Association (Applicant) v. Nipigon District Memorial Hospital (Respondent).

Unit: "all registered and graduate nurses engaged in a nursing capacity employed by Nipigon District Memorial Hospital, Nipigon, Ontario, save and except the Director of Nursing, supervisors and persons above the rank of supervisor, and persons covered by subsisting collective agreements." (11 employees in the unit).  
(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7243-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Electro Dynamics and Telecom Ltd. (Respondent).

Unit: "all employees of the respondent in Chatham, save and except foremen, persons above the rank of foreman, design and development laboratory technologist, office and sales staff." (31 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7255-74-R: Ontario Nurses' Association (Applicant) v. The Sisters of St. Joseph of the Diocese of London in Ontario as owner and operator of St. Joseph's Hospital, Chatham, Ontario (Respondent) v. Group of Employees (Objectors).

Unit #1: "all lay registered and graduate nurses employed in a nursing capacity by The Sisters of St. Joseph of the Diocese of London in Ontario as owner and operator of St. Joseph's Hospital, Chatham, Ontario, save and except head nurses, persons above the rank of head nurse, and nurses regularly employed for not more than twenty-four hours per week." (51 employees in the unit).  
(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all lay registered and graduate nurses employed in a nursing capacity regularly employed for not more than twenty-four hours per week by The Sisters of St. Joseph of the Diocese of London in Ontario as owner and operator of St. Joseph's Hospital, Chatham, Ontario save and except head nurses and persons above the rank of head nurse." (60 employees in the unit).  
(FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE

PARTIES THAT PERSONS CLASSIFIED AS INFECTION CONTROL NURSE AND THE EMPLOYEE HEALTH NURSE ARE INCLUDED IN THE APPROPRIATE BARGAINING UNITS DESCRIBED ABOVE.).

7257-74-R: Ontario Nurses' Association (Applicant) v. The Perley Hospital (Respondent).

Unit #1: "all registered and graduate nurses engaged in a nursing capacity employed by the respondent at Ottawa, save and except head nurses, persons above the rank of head nurse, persons who are regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (29 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE PARTIES AGREED THAT THE LIST OF EMPLOYEES IN THE BARGAINING UNIT DEFINED IN PARAGRAPH FIVE HEREIN FOR THE PURPOSES OF THE COUNT CONSISTED OF TWENTY-NINE NAMES. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP OF THE TYPE REFERRED TO IN PARAGRAPH TWO HEREIN ON BEHALF OF TWENTY-ONE OF THESE TWENTY-NINE PERSONS.).

Unit #2: "all registered and graduate nurses engaged in a nursing capacity who are regularly employed by the respondent at Ottawa for not more than twenty-four hours per week, save and except head nurses and persons above the rank of head nurse." (7 employees in the unit). (HAVING FURTHER REGARD TO THE AGREEMENT OF THE PARTIES). (THE PARTIES AGREED THAT THE LIST OF EMPLOYEES IN THE BARGAINING UNIT DEFINED IN PARAGRAPH SIX HEREIN FOR THE PURPOSE OF THE COUNT CONSISTED OF SEVEN NAMES. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP OF THE TYPE REFERRED TO IN PARAGRAPH TWO HEREIN ON BEHALF OF FIVE OF THESE SEVEN PERSONS.).

7279-74-R: Labourers International Union of North America, Local Union #493 (Applicant) v. N. & N. Masonry (Respondent).

Unit: "all construction labourers in the employ of the respondent within a twenty mile radius of the North Bay post office, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

7281-74-R: Labourers' International Union of North America Local 625 (Applicant) v. Pre Stressed Systems, Windsor Limited (Respondent).

Unit: "all employees working for the Respondent at their Precast Plant located at Walker Road at Highway 401 in the Township of Sandwich South, save and except foreman and persons above the rank." (2 employees in the unit).

7284-74-R: Retail Clerks International Association (Applicant)  
v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of the respondent at Cobourg, Ontario, save and except store manager and persons above the rank of store manager." (4 employees in the unit).

7287-74-R: Retail Clerks International Association (Applicant)  
v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of the respondent at Orillia, Ontario, save and except store manager and persons above the rank of store manager." (4 employees in the unit).

7293-74-R: United Steelworkers of America (Applicant) v. G. M. Nelson Maintenance Limited (Respondent).

Unit: "all employees of the respondent at Sudbury, save and except foremen, persons above the rank of foreman, office and sales staff." (12 employees in the unit).

7307-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. M. J. Finn Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Prince Edward County and the Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the Townships of Percey and Cramahe and all lands east thereof in the United Counties of Northumberland and Durham, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (HAVING REGARD TO THE FOREGOING).

7321-74-R: Retail Clerks International Association (Applicant)  
v. Great Universal Stores of Canada Limited (Respondent).

Unit: "all employees of the respondent at Parry Sound, save and except store manager and persons above the rank of store manager." (3 employees in the unit).

7322-74-R: Retail Clerks International Association (Applicant)  
v. Great Universal Stores of Canada Limited (Respondent).

Unit: "all employees of the respondent at Brampton, save and except store manager and persons above the rank of store manager." (4 employees in the unit).



7323-74-R: Retail Clerks International Association (Applicant) v. Great Universal Stores of Canada Limited (Respondent).

Unit: "all employees of the respondent at North Bay, save and except store manager and persons above the rank of store manager." (4 employees in the unit).

7325-74-R: Canadian Union of Public Employees (Applicant) v. Scarborough Public Library (Respondent).

Unit: "all professional librarians employed by the respondent at Scarborough, save and except Division Heads, persons above the rank of Division Head, Director, and Librarians employed for not more than 24 hours per week." (46 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7334-74-R: Teamsters Union, Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. UBA Chemical Industries Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the company in Metropolitan Toronto save and except foreman, dispatchers and those above the rank of foreman, dispatcher, office and sales staff." (16 employees in the unit).

(1975) 2 OLRB M.R. - PAGE 198.

7342-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Alcan-Colony Contracting Co. Limited (Respondent).

Unit: "all employees of the respondent in the United Counties of Stormont, Dundas and Glengarry, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

7344-74-R: Canadian Union of Public Employees (Applicant) v. The Metropolitan Toronto School Board (Respondent).

Unit: "all teacher's aides employed by the respondent in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisors and persons regularly employed for not more than 24 hours per week." (68 employees in the unit).

7345-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Pillar Forming Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

7349-74-R: London and District Service Workers Union, Local 220 (Applicant) v. Modern Building Cleaning Division of Dust-ban Enterprises Limited (Respondent).

Unit: "all employees of the respondent engaged in servicing its contract with the Municipality of the City of London at the Police Administration Building located at Adelaide and Dundas Streets, London, Ontario, save and except supervisors, persons above the rank of supervisor, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation periods." (9 employees in the unit).

7351-74-R: Retail Clerks International Association (Applicant) v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of the respondent at Guelph, save and except store manager and persons above the rank of store manager." (4 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7353-74-R: Retail Clerks International Association (Applicant) v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of the respondent at London, save and except store manager and persons above the rank of store manager." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7358-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Ambro Materials & Construction Ltd. (Respondent).

Unit: "all employees of the respondent directly engaged in the maintenance, servicing and repair of equipment at the company's yard at Thunder Bay, save and except dispatchers, scalemen, watchmen, clerks, technicians, stockkeepers, office and sales staff, foremen and persons above the rank of foreman, students employed during the school vacation period and persons covered by a subsisting collective agreement." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7359-74-R: Labourers International Union of North America, Local 491 (Applicant) v. Milne & Nicholls Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

7366-74-R: Hotel & Restaurant Employees & Bartenders International Union Local 197 (Applicant) v. Glass Workers Social Club (Respondent).

Unit: "all employees of the Glass Workers Social Club." (2 employees in the unit). (THE BOARD NOTED THAT THE RESPONDENT DOES NOT EMPLOY ANYONE WHO EXERCISES MANAGERIAL FUNCTIONS AT THIS TIME.).

7372-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Duncan Ceiling-Kawartha Lath (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

7378-74-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local 141, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Crane Supply Division of Crane Canada Limited (Respondent).

Unit: "all employees of the respondent company at London, Ontario, save and except foremen, persons above the rank of foreman, office staff, sales staff, service staff, persons regularly employed for not more than 24 hours per week and students employed during the vacation periods." (6 employees in the unit). (IT IS TO BE NOTED THAT BOTH PARTIES AGREED THAT THE SERVICE STAFF WAS MORE CLOSELY ALIGNED WITH THE OFFICE STAFF AND HENCE THE BARGAINING UNIT DESCRIPTION RESULTS FROM AN AGREEMENT OF THE PARTIES).

7383-74-R: Retail Clerks International Association (Applicant) v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of the respondent at Chatham, Ontario, save and except store managers and persons above the rank of store manager." (3 employees in the unit).



7384-74-R: Retail Clerks International Association (Applicant)  
v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of the respondent at Windsor, Ontario, save and except store managers and persons above the rank of store manager." (4 employees in the unit).

7387-74-R: G. E. McGuinty Employees Association (Applicant)  
v. G. E. McGuinty Construction Company Limited (Respondent).

Unit #1: "all construction labourers in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

Unit #2: "all construction labourers in the employ of the respondent within a twenty mile radius of the North Bay post office, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

7388-74-R: United Textile Workers of America (Applicant) v. Unitog Canada Ltd. (Respondent).

Unit: "all employees of the respondent at Pembroke, save and except formen, persons above the rank of foreman, and office staff." (39 employees in the unit).

7397-74-R: Christian Labour Association of Canada (Applicant)  
v. Al Smith Plastering & Partition Co. Ltd. (Respondent).

Unit: "all plasterers, plasterers' apprentices, lathers, lathers' apprentices and construction labourers in the employ of the respondent in the County of Grey, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit). (HAVING REGARD TO THE FOREGOING). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRYWALL APPLICATORS AND DRYWALL TAPERS ARE INCLUDED IN THE BARGAINING UNIT.).

7402-74-R: Ontario Nurses' Association (Applicant) v. Board of Health Northwestern Health Unit (Respondent).

Unit: "all registered and graduate nurses engaged in a nursing capacity employed by the Northwestern Health Unit, Kenora, Ontario, save and except Supervisors and persons above the rank of Supervisor." (19 employees in the unit).

7406-74-R: Ontario Nurses' Association (Applicant) v. Royal Ottawa Hospital (Respondent).

Unit: "all registered and graduate nurses engaged in a nursing capacity employed by the respondent, in Ottawa, Ontario, save and except head nurses, persons above the rank of head nurse, clinical co-ordinator, staff health nurse, inservice co-ordinator, senior emergency nurse and persons regularly employed for not more than twenty-four hours per week." (151 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE PERSON CLASSIFIED AS "INSERVICE INSTRUCTRESS" IS INCLUDED IN THE BARGAINING UNIT.).

7412-74-R: Service Employees Union, Local 268 (Applicant) v. Atikokan General Hospital (Respondent).

Unit: "all employees of Atikokan General Hospital, Atikokan, Ontario, regularly employed for not more than 24 hours per week save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate, pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foreman, persons above the rank of supervisor or foreman, chief engineer, stationary engineers, office staff, and students hired for the school vacation period." (14 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7413-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 446 (Applicant) v. Wilputte Canada Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in that portion of the District of Algoma south of the 49th parallel of latitude, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

7417-74-R: Labourers' International Union of North America Local 527 (Applicant) v. Frigon & Son Construction Masonry Frigon & Fils Construction Maçonnerie (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

7418-74-R: International Association of Bridge, Structural and Ornamental Iron Workers Local 765 (Applicant) v. James Kemp Construction Co. (Respondent).

Unit: "all ironworkers in the employ of the respondent in the County of Lennox and Addington, and the County of Frontenac and the Townships of Rear of Leeds, and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

7428-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Sillman Company (Northern) Limited (Respondent).

Unit: "all employees of the respondent in the District of Thunder Bay engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (14 employees in the unit).

7433-74-R: Canadian Guards Association (Applicant) v. Laurentian University (Respondent).

Unit: "all security officers in the employ of the respondent in Sudbury, save and except supervisors, persons above the rank of supervisor, night watchmen, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (9 employees in the unit).

7434-74-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Belgium Standard Waste Management Limited (Respondent).

Unit: "all employees of the respondent working at and out of the Town of Vaughan, save and except foremen, persons above the rank of foreman, office and sales staff." (9 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7437-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 446 (Applicant) v. H. E. Dand Construction, (Division of R. M. Elliott Construction Limited) (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in that portion of the District of Algoma south of the 49th parallel of latitude, save and except non-working



foremen, persons above the rank of non-working foreman and those covered by subsisting collective agreement." (7 employees in the unit).

7440-74-R: Retail Clerks International Association (Applicant) v. Adams Furniture Stores Limited (Respondent).

Unit: "all employees of the respondent at Stratford, save and except store managers, persons above the rank of store manager." (5 employees in the unit).

7441-74-R: Retail Clerks International Association (Applicant) v. Adams Furniture Stores Limited (Respondent).

Unit: "all employees of the respondent at Woodstock, Ontario, save and except store managers and persons above the rank of store manager." ( 5 employees in the unit).

7444-74-R: Textile Workers Union of America, AFL-CIO-CLC (Applicant) v. Adams Manufacturing Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, foreladies, persons above the rank of foreman and forelady, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (2 employees in the unit).

7453-74-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. J. H. Lunny, Westeel-Rosco Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

7454-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Chelsey Contractors Company (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (19 employees in the unit).

7455-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Ravane Construction Company (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

7489-74-R: Sheet Metal Workers' International Association, Local Union #47 (Applicant) v. L. A. Graves Building Services Limited (Respondent).

Unit: "all employees of the respondent engaged in roofing in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit). (FOR PURPOSES OF CLARITY THE BOARD DETERMINED THAT THE APPROPRIATE UNIT INCLUDES EMPLOYEES ENGAGED IN ROOFING WORK AND IS THEREBY NOT RESTRICTED TO EMPLOYEES SOLELY EXERCISING SPECIAL SKILLS RELATING TO SHEET METAL WORK.).

#### Application Certified Subsequent to Pre-Hearing Vote

7199-74-R: United Steelworkers of America (Applicant) v. Reynolds Extrusion Company Limited (Respondent) v. Shopmen's Local Union No. 757 of the International Association of Bridge, Structural and Ornamental Iron Workers (Intervener).

Unit: "all employees of the respondent at Richmond Hill, save and except foremen, persons above the rank of foreman, office, clerical and sales staff and students employed during the school vacation period." (171 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list	171
Number of persons who cast ballots	131
Number of ballots marked in favour of applicant	93
Number of ballots marked in favour of intervener	38

Applications Certified Subsequent to Post-Hearing Vote

7015-74-R: International Leather Goods, Plastics and Novelty Workers' Union, Affiliated with AFL-CIO (Applicant) v. Carson Luggage of Canada Limited (Respondent) v. The Independent Employees' Union of Carson Luggage of Canada Limited (Intervener).

Unit: "all employees of the respondent at 360 Coventry Road, Ottawa, save and except foremen, foreladies and supervisors, and persons above those ranks, maintenance mechanics, office and sales staff, persons regularly employed for not more than twenty four hours per week and students employed during the school vacation period." (96 employees in the unit).

Number of names of persons on revised voters' list		99
Number of persons who cast ballots	98	
Ballots segregated and not counted	1	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	84	
Number of ballots marked against applicant	11	

7090-74-R: Ontario Nurses' Association (Applicant) v. The Toronto Western Hospital (Respondent) v. Group of Employees (Objectors).

Unit #1: "all registered and graduate nurses employed at The Toronto Western Hospital, engaged in a nursing capacity save and except head nurses, those above the rank of head nurse and persons regularly employed for not more than twenty-four hours per week." (514 employees in the unit).

Number of names of persons on revised voters' list		568
Number of persons who cast ballots	453	
Number of ballots segregated and not counted	1	
Number of spoiled ballots	3	
Number of ballots marked in favour of applicant	421	
Number of ballots marked against applicant	28	

Unit #2: "all registered and graduate nurses employed at the Toronto Weston Hospital, engaged in a nursing capacity, regularly employed for not more than twenty-four hours per week, save and except head nurses and those above the rank of head nurse." (52 employees in the unit).



Number of names of persons on revised voters' list	53
Number of persons who cast ballots	20
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	4

7147-74-R: Canadian Union of Public Employees (Applicant) v. St. Joseph Hospital (Respondent).

Unit: "all employees of St. Joseph Hospital employed for not more than twenty-four hours per week and students employed during the school vacation period at St. Joseph Hospital, Sudbury, save and except Professional Medical Staff, Graduate and Registered Nurses, Graduate Pharmacists, Graduate Dietitians, Student Dietitians, Technical Personnel, Executive and Administrative Secretaries, Under-Graduate Nurses, an Assistant Supervisor an Admitting, Information, Telephone, Mail and Messenger Services, An Assistant Supervisor in Physical Plant and Maintenance." (42 employees in the unit).

Number of names of persons on voters' list	42
Number of persons who cast ballots	24
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	0

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING MARCH

##### No Vote Conducted

5454-74-R: Hamilton and District Sheet Metal Contractors Inc (Applicant) v. Sheet Metal Workers' International Association Local Union 537 Hamilton Ontario Branch (Respondent) v. Electrical Power Systems Construction Association (Intervener) (no employees).

7041-74-R: International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local #173, Toronto, Ontario (Applicant) v. T. W. C. Television Limited (Respondent) v. Group of Employees (Objectors). (20 employees).

7044-74-R: Labourers International Union of North America, Local 837 (Applicant) v. Benbee Diving & Marine Ltd. (Respondent) v. Group of Employees (Objectors). (5 employees).

7177-74-R: Bakery & Confectionary Workers' International Union of America, Local 426 (Applicant) v. Christie, Brown & Company Limited (Respondent) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Intervener). (40 employees).

(1974) 2 OLRB M.R. - PAGE 144.

7368-74-R: Toronto Printing Pressmen & Assistants' Union No. 10 Subordinate to International Printing and Graphic Communications Union (Applicant) v. University of Toronto Governing Council (Respondent). (23 employees).

7377-74-R: Boot and Shoe Workers' Union, CLC-AFL-CIO (Applicant) v. Bata Industries Ltd. (Respondent). (10 employees).

7396-74-R: Chatham Construction Workers Association Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Delcon Electric Limited (Respondent). (2 employees).

7415-74-R: International Association of Bridge, Structural and Ornamental Iron Workers Local 765 (Applicant) v. James Kemp Construction Co. (Respondent). (6 employees).

#### Certification Dismissed Subsequent to Pre-Hearing Vote

7240-74-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Fram Canada Limited (Respondent).

Voting Constituency: "All employees of the respondent at Stratford, Ontario, save and except foremen, persons above the rank of foreman, laboratory technicians, nurses, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (379 employees in the unit).

Number of names of persons on revised voters' list	372
Number of persons who cast ballots	333
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	155
Number of ballots marked against applicant	177

Certification Dismissed Subsequent to Post-Hearing Vote

6674-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Kaneff Construction Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent engaged in cleaning and maintenance at Sherobee Towers, Mississauga, save and except the property manager, persons above the rank of property manager, office and clerical staff." (4 employees in the unit).

Number of names of persons on voters' list	4
Number of persons who cast ballots	3
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	3

7160-74-R: Canadian Union of Public Employees (Applicant) v. Carleton Roman Catholic Separate School Board (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in its maintenance services and plant operation, in the Municipality of Carleton, Ontario, save and except foremen, persons above the rank of foreman, bus drivers and persons regularly employed for not more than twenty-four hours per week." (101 employees in the unit).

Number of names of persons on voters' list	76
Number of persons who cast ballots	77
Ballots segregated and not counted	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	37
Number of ballots marked against applicant	38



APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MARCH

7134-74-R: Labourers' International Union of North America Local 527 (Applicant) v. ASAC Developments Ltd. (Respondent). (15 employees).

7296-74-R: The Hotel and Club Employees' Union, Local 299, Toronto of the Hotel and Restaurant Employees and Bartenders International Union. (A.F.L.-C.I.O.-C.L.C.) (Applicant) v. Harbour Castle Hotel, A Division of Campeau Corporation Limited (Respondent) v. Canadian Workers Union (Intervener). (3 employees).

7350-74-R: Retail Clerks International Association (Applicant) v. Great Universal Stores of Canada Limited (Respondent). (5 employees).

7373-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. George and Asmussen Limited, Masonry Contractors (Respondent). (2 employees).

7374-74-R: The Canadian Union of Public Employees (Applicant) v. The Recreation and Park Commission of the Corporation of the Town of Renfrew (Respondent). (12 employees).

7393-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Construction Equipment Company (Respondent). (18 employees).

7421-74-R: Labourers' International Union of North America Local 527 (Applicant) v. Campeau Corporation (Respondent). (3 employees).

7429-74-R: Oil, Chemical and Atomic Workers International Union Local 9-599 (Applicant) v. Murphy Oil Company Limited (Respondent). (7 employees).

7431-74-R: Service Employees Union, Local 204 affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. Etobicoke General Hospital (Respondent) v. Canadian Union of Operating Engineers, Local 101 (Intervener #1) v. The Civil Service Association of Ontario Inc. (Intervener #2). (372 employees).

7456-74-R: Christian Labour Association of Canada (Applicant) v. Indian Bay Limited (I.B. Mechanical and Electrical) (Respondent). (2 employees).

# APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

## DISPOSED OF DURING MARCH

6619-74-R: Raymond M.C. Sharpe (Applicant) v. International Brotherhood of Electrical Workers Union, Local 2345 (Respondent). (GRANTED).

Unit: "all employees employed in the maintenance of parks and arena in the Town of Listowel." (2 employees in the unit).

Number of names of persons on voters' list	2
Number of persons who cast ballots	2
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	2

6719-74-R: Horace Dunn (Applicant) v. Canadian Union of Public Employees (Respondent) v. The Regional Municipality of Peel (Intervener). (12 employees). (WITHDRAWN).

6985-74-R: Local Branch of Federation of Children's Aid Staffs of Children's Aid Society of Sault Ste. Marie and District of Algoma (Applicant) v. Federation of Children's Aid Staffs (Respondent). (GRANTED).

Unit #1: "all social workers, social work assistants and case-aides employed by the Society at its offices at Sault Ste. Marie and in the District of Algoma, save and except supervisors, persons above the rank of supervisor, persons employed for not more than 24 hours per week and students employed during the school vacation period." (13 employees in the unit).

Number of names of persons on list	13
Number of persons who cast ballots	13
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	13

Unit #2: "all employees of the Society at its offices at Sault Ste. Marie and in the District of Algoma, save and except office supervisors, persons above the rank of office supervisor, social workers, social work assistants, case-aides, social workers supervisors, secretary to the Director, persons employed for

not more than 24 hours per week and students employed during the school vacation period." (5 employees in the unit).

Number of names of persons on voters' list		5
Number of persons who cast ballots	5	
Number of spoiled ballots	1	
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	4	

Unit #3: "all social workers, social work assistants, and case-aides regularly employed for not more than 24 hours per week at its offices in Sault Ste. Marie and the District of Algoma." (2 employees in the unit).

Number of persons on voters' list		2
Number of persons who cast ballots	2	
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	2	

7245-74-R: The Employees of Hand Nursing Homes Limited, Carrying on Business as West Lake Nursing and Convalescent Home (Applicant) v. Canadian Union of General Employees (Respondent) v. West Lake Nursing & Convalescent Home (Intervener). (29 employees). (DISMISSED).

7273-74-R: Lloyd King (Applicant) v. International Union of Operating Engineers, Local 796 (Respondent). (8 employees). (DISMISSED).

7314-74-R: Sherwood Hugh Reid (Applicant) v. The International Union of Operating Engineers, Local 796 (Respondent). (8 employees). (DISMISSED).

7331-74-R: Francis Slade (Applicant) v. Service Employees International Union, AFL, CIO, CLC, affiliated Service Employees Union, Local 204 (Respondent) v. Birchcliff Nursing Home (Employer). (42 employees). (DISMISSED).

7391-74-R: Helen Glaser (Applicant) v. Retail Wholesome and Department Store Union, Local #1002, A.F.L., C.I.O., C.L.C. (Respondent). (14 employees). (WITHDRAWN).



7457-74-R: Anthony Xuereb, on behalf of himself and other employees of Royal Broadloom Company (Applicant) v. Local Union 1465, Resilient Floor Workers (Residential), United Brotherhood of Carpenters and Joiners of America (Respondent). (2 employees). (GRANTED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF

DURING MARCH

7223-74-R: Ontario Nurses' Association (Applicant) v. Durham Regional Health Unit (Respondent) v. Nurses' Association Durham Regional Health Unit (Predecessor Trade Union). (GRANTED).

7297-74-R: Thunder Bay Lodge 1120, International Association of Machinists and Aerospace Workers (Applicant) v. Abitibi Paper Company Ltd. Fort William Division (Respondent) v. International Association of Machinists & Aerospace Workers, Local No. 1710 (Predecessor Trade Union). (GRANTED).

7298-74-R: Thunder Bay Lodge 1120, International Association of Machinists and Aerospace Workers (Applicant) v. West Coast Wire Works, Ltd. (Lakehead Division) (Respondent) v. Lodge No. 1710, International Association of Machinists & Aerospace Workers (Predecessor Trade Union). (GRANTED).

7332-74-R: Ontario Nurses' Association (Applicant) v. The Queensway General Hospital Association (Respondent) v. Nurses' Association, Queensway General Hospital (Predecessor Trade Union). (GRANTED).

7408-74-R: Ontario Nurses' Association (Applicant) v. The Board of Governors of the Kingston General Hospital (Respondent). (GRANTED).

7409-74-R: Ontario Nurses' Association (Applicant) v. The Board of Health Sudbury & District Health Unit (Respondent). (WITHDRAWN).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF

DURING MARCH

7354-74-U: Consumers Glass Company Limited (Applicant) v. Ernest Leonard Childs et al (Respondents). (WITHDRAWN).

7438-74-U: The Wood, Wire & Metal Lathers' International Union, Local 562 (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 38 (Respondent). (DIRECTION).

(1975) 2 OLRB M.R. - PAGE 204.

7458-74-U: Andco Anderson Limited (Applicant) v. Local Union 105, International Brotherhood of Electrical Workers and William W. Corbett (Respondents). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

6707-74-U: Toronto Cloak Manufacturers Association (Applicant) v. International Ladies' Garment Workers' Union, The Toronto Joint Board of the International Ladies' Garment Workers, Henry Mulder and William Villano (Respondents). (DISMISSED).

7270-74-U: Federation of Children's Aid Staffs (Applicant) v. Loyal True Blue and Orange Home (Respondent). (GRANTED).

7305-74-U: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Westinghouse Canada Limited (Respondent). (GRANTED).

7338-74-U: Concrete Construction Supplies of Windsor Limited (Applicant) v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880 (Respondent). (WITHDRAWN).

7340-74-U: Elwin (Tony) Gordon (Applicant) v. The Doctor's Hospital (Respondent). (WITHDRAWN).

7355-74-U: Consumers Glass Company Limited (Applicant) v. Ernest Leonard Childs et al (Respondents). (WITHDRAWN).

7447-74-U: Diane A. Levesque, Box 37, 57-3rd Ave., Coniston, Ontario (Applicant) v. M. Loeb Cash and Carry, 68A Lorne Street South, Sudbury, Ontario. Retail, Wholesale and Department Store Union, Local Union 579, 19 Regent Street, South, Sudbury, Ontario (Respondent). (DISMISSED).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED  
OF DURING MARCH

7028-74-U: Clifford Renaud 1629 Shawnee Rd. Tecumseh, Ont.  
7354851 (Complainant) v. The United Steelworkers of America,  
 Local 2471, at Hawker Industries Limited Canadian Bridge  
 Division, St. Luke Rd., Windsor, Ontario (Respondent).  
 (WITHDRAWN).

7071-74-U: Tobacco Workers' International Union (Complainant)  
 v. Simcoe Leaf Tobacco Company Limited (Respondent). (DISMISSED).

(1975) 2 OLRB M.R. - PAGE 186.

7137-74-U: Graphic Arts International Union, Local 224 (Com-  
 plainant) v. Beauregard Press Limited (Respondent). (DISMISSED).

(1974) 2 OLRB M.R. - PAGE 168.

7176-74-U: Amalgamated Meat Cutters and Butcher Workmen of  
 North America (Complainant) v. Hostess Food Products Ltd.  
 (Respondent). (GRANTED).

(1975) 2 OLRB M.R. - PAGE 210.

7188-74-U: Canadian Union of Public Employees (Complainant) v.  
 McDonnell Memorial Hospital (Respondent). (DISMISSED).

7246-74-U: Mrs. Darlene Belsito (Complainant) v. Service  
 Employee's Union - Local 268 (Respondent). (WITHDRAWN).

7261-74-U: Ontario Nurses' Association (Complainant) v.  
 Extendicare Limited (Respondent). (WITHDRAWN).

7339-74-U: Elwin (Tony) Gordon (Complainant) v. Local 1474,  
 Canadian Union of Public Employees (Respondent). (WITHDRAWN).

7392-74-U: Steven Ramcharitar (Complainant) v. Teamsters Local  
 Union No. 230 Ready-Mix, Building Supply, Hydro & Construction  
 Drivers, Warehousemen & Helpers; International Brotherhood of  
 Teamsters, Chauffeurs, Warehousemen and Helpers (Respondent).  
 (WITHDRAWN).

7410-74-U: United Cement, Lime and Gypsum Workers International  
 Union, A.F.L.-C.I.O.-C.L.C., Local 539 (Complainant) v. Phil  
 Gauthier of the Operating Engineers Local 693 (Respondent).  
 (WITHDRAWN).



7469-74-U: Witold Korsak (Complainant) v. United Cement, Lime and Gypsum Workers International Union Local Union No. 494 (Respondent). (WITHDRAWN).

7501-74-U: E. Schweizer (Complainant) v. D. Stokes (Respondent). (WITHDRAWN).

#### APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENTS

7341-74-M: The Labourers' International Union of North America, Local 506 (Trade Union) v. Canada Building Materials Company, Richvale, Ontario (Employer). (GRANTED).

7360-74-M: Canadian Woodworkers' Union No. 167, N.C.C.L. (Trade Union) v. Laidlaw-Goodwood Industries Limited (Employer). (GRANTED).

#### APPLICATION UNDER SECTION 55 DISPOSED OF DURING MARCH

6518-74-R: Canadian Union of Public Employees (Applicant) v. The Regional Municipality of Peel (Respondent) v. Group of Employees (Objectors). (DISMISSED).

Unit: "all office and technical employees in the Public Works Department of the respondent, save and except Supervisor, foremen and those above the rank of supervisor and foreman, persons covered by the subsisting bargaining units, secretaries to the Work's Commissioner, Directors and Chief Engineers, Administrative Assistant to the Director of Engineering Services, persons employed during the school vacation period, and students on a co-operative students training program."

Number of names of persons on voters' list		48
Number of persons who cast ballots		48
Ballots segregated and not counted	2	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	2	
Number of ballots marked against applicant		43

#### JURISDICTIONAL DISPUTES

5801-74-JD: The Lumber and Sawmill Workers' Union, Local 2995, of the United Brotherhood of Carpenters and Joiners of America

(Complainant) v. Spruce Falls Power and Paper Company, Limited (the Company), United Papermakers and Paperworkers Union, Local 89 (Local 89), and International Brotherhood of Electrical Workers, Local 1149 (Local 1149) (Respondents). (WITHDRAWN).

6637-74-JD: Deep Foundations Limited (Complainant) v. United Brotherhood of Carpenters and Joiners of America, Local 18, Labourers' International Union of North America, Local 837, and Pigott Structures Co. Ltd. (Respondents). (DIRECTION).

(1975) 2 OLRB M.R. - PAGE 175.

#### APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED

##### OF DURING MARCH

6573-74-M: United Cement, Lime & Gypsum Workers International Union, Local 487, AFL-CIO-CLC (Applicant) v. General Concrete of Canada Ltd. (Respondent) v. J. Chappell, et al (Intervenors). (AFFIRMATIVE).

(1975) 2 OLRB M.R. - PAGE 234.

7312-74-M: Service Employees' Union, Local 204 (Applicant) v. The Governing Council of the University of Toronto (Respondent). (WITHDRAWN).

#### APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

6943-7 -R: Northern Electric London Professional Association (Applicant) v. Northern Electric Company Limited (Respondent) v. U.A.W. Local 1525 (Intervener). (REQUEST DENIED).

(1975) 2 OLRB M.R. - PAGE 164.

#### APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 95(2)

7072-74-M: United Cement, Lime and Gypsum Workers' International Union, Local 306 (Applicant) v. Indusmin Limited (Respondent) v. OPS Transport Ltd. (Intervener). (REQUEST DENIED).

(1975) 2 OLRB M.R. - PAGE 184.

STATISTICAL TABLES FOR 4TH QUARTER AND OF FISCAL YEAR 1974-75

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	Number Filed		
	4th Quarter	Fiscal Year	
	(Jan - Mar) 1974-75	1974-75	1973-74
I. Certification	282	1333	1331
II. Declaration Terminating Bargaining Rights	23	57	66
III. Declaration of Successor Status	31	62	42
IV. Declaration that Strike Unlawful	10	96	49
V. Declaration that Lock-Out Unlawful	-	6	3
VI. Consent to Prosecute	30	146	91
VII. Complaint of Unfair Practice in Employment (Section 79)	70	194	221
VIII. Miscellaneous	<u>24</u>	<u>262</u>	<u>111</u>
TOTAL	<u>470</u>	<u>2156</u>	<u>1914</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number		
	4th Quarter	Fiscal Year	
	(Jan - Mar) 1974-75	1974-75	1973-74
Hearings and Continuation of Hearings by the Board	267	1273	1278



TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS  
BOARD BY MAJOR TYPES

	Number Disposed of		
	4th Quarter (Jan - Mar) 1974-75	Fiscal Year	
		1974-75	1973-74
I. Certification	253	1364	1344
II. Declaration Terminating Bargaining Rights	18	53	58
III. Declaration of Successor Status	24	44	38
IV. Declaration of Strike Unlawful	7	82	41
V. Declaration that Lock-Out Unlawful	4	6	3
VI. Consent to Prosecute	23	126	91
VII. Complaint of Unfair Practice in Employment (Section 79)	51	205	235
VIII. Miscellaneous	<u>33</u>	<u>268</u>	<u>97</u>
TOTAL	413	2148	1907
	==	==	==

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION

	Number of Applications			Number of Employees*		
	4th Quarter	Fiscal Year		4th Quarter	Fiscal Year	
	(Jan - Mar)			(Jan - Mar)		
	<u>1974-75</u>	<u>1974-75</u>	<u>1973-74</u>	<u>1974-75</u>	<u>1974-75</u>	<u>1973-74</u>
<u>I. Certification</u>						
Granted	175	916	900	5631	28813	37497
Dismissed	48	295	296	2328	16656	15524
Withdrawn	<u>30</u>	<u>153</u>	<u>148</u>	<u>1165</u>	<u>4348</u>	<u>4012</u>
TOTAL	253	1364	1344	9124	49817	57033
	<u>=====</u>	<u>=====</u>	<u>=====</u>	<u>=====</u>	<u>=====</u>	<u>=====</u>
<u>II. Termination of Bargaining Rights</u>						
Granted	9	22	31	309	610	2266
Dismissed	7	26	25	318	814	2111
Withdrawn	<u>2</u>	<u>5</u>	<u>2</u>	<u>26</u>	<u>1381</u>	<u>47</u>
TOTAL	18	53	58	653	2805	4424
	<u>=====</u>	<u>=====</u>	<u>=====</u>	<u>=====</u>	<u>=====</u>	<u>=====</u>

\*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION (CONTINUED)

	Number of Applications		
	4th Quarter	Fiscal Year	
	(Jan - Mar)	1974-75	1973-74
	1974-75	1974-75	1973-74
III. <u>Declaration that Strike</u>			
<u>Unlawful</u>			
Granted	1	11	6
Dismissed	-	18	5
Withdrawn	<u>6</u>	<u>53</u>	<u>30</u>
TOTAL	7	82	41
	=	=	=
IV. <u>Declaration that Lock-Out</u>			
<u>Unlawful</u>			
Granted	-	-	-
Dismissed	-	2	3
Withdrawn	<u>4</u>	<u>4</u>	<u>-</u>
TOTAL	4	6	3
	=	=	=
V. <u>Consent to Prosecute</u>			
Granted	2	11	16
Dismissed	5	29	13
Withdrawn	<u>16</u>	<u>86</u>	<u>62</u>
TOTAL	23	126	91
	=	=	=
VI. <u>Complaint of Unfair</u>			
<u>Practice in Employment</u>			
<u>(Section 79)</u>			
Granted	6	13	17
Dismissed	13	84	80
Withdrawn	<u>32</u>	<u>108</u>	<u>138</u>
TOTAL	51	205	235
	=	=	=



TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes		
	4th Quarter	Fiscal Year	
	(Jan - Mar)	1974-75	1973-74
	1974-75	1974-75	1973-74
<u>Certification after Vote*</u>			
Pre-hearing Vote	14	61	64
Post-hearing Vote	17	92	90
Ballots not Counted	-	-	-
<u>Dismissed after Vote</u>			
Pre-hearing Vote	9	75	49
Post-hearing Vote	9	55	54
Ballots not Counted	-	2	5
TOTAL	49	285	262
	==	==	==

\*Includes applicant-intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes		
	4th Quarter	Fiscal Year	
	(Jan - Mar)	1974-75	1973-74
	1974-75	1974-75	1973-74
*Respondent Union Successful	1	5	3
Respondent Union Unsuccessful	7	18	17
TOTAL	8	23	20

\*In Termination Proceedings where a vote is taken the applicant is a group of employees or the employer; the incumbent union is thus the respondent.

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# Monthly Report

ONTARIO LABOUR RELATIONS BOARD





CHIRALD

1181

ONTARIO LABOUR RELATIONS BOARD REPORTS

A Monthly Series of Decisions from the  
Ontario Labour Relations Board

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is clear that all facets of the decision making process directly related to the employment status of ward employees are assumed by Mrs. Rowles. This is clearly indicated in the evidence where Mrs. Cunningham stated that the Director of Nursing is the ultimate judge in the disposition of assessment reports prepared by her. This was also illustrated in context of the head nurses powers to reprimand. Should an employee arrive at work in drunken state the head nurse would send her home. After doing so, she would then file a report with Mrs. Rowles who would be ultimately responsible for taking more permanent measures. Clearly the pervasive impression left with this Board is that in defining the appropriate bargaining unit the managerial line of authority is to be drawn at the office of the Director of Nursing. We therefore find that Mrs. M. Cunningham does not exercise managerial functions within the meaning of section 1(3)(b) of the Act.

10. The Board received written representations from the respondent dated February 28, 1975 where it is indicated that the hospital is presently in the process of expansion that will in the near future require widening the scope of the duties and responsibilities performed by its head nurses. The submission is made that the Board take this into account in reaching a conclusion on the managerial issue. In answer to this submission, the Board may only make rulings on evidence before us as of the date of the filing of an application. In the event that the duties and responsibilities of head nurses change in the near future then a remedy is available to the respondent under S95(2) of the Act.

11. The Board therefore finds that all registered and graduate nurses employed by St. Peter's Hospital, Hamilton, Ontario, in a nursing capacity save and except Director of Nursing and persons above the rank of Director of Nursing, constitute a unit of employees of the respondent appropriate for collective bargaining.

12. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on January 6th, 1975, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

13. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER J. D. BELL: March 27, 1975.

I disagree with the majority that the managerial line of authority is to be drawn at the Director of Nursing. It is impractical and unreasonable to find one individual to be the only person that exercises managerial functions over a staff of 120 covering the 24 hour day in a chronic care Hospital.

Mrs. Cunningham is directly responsible for the performance of some 28 persons under her supervision and is accountable for the operation of her area. How can she carry out these responsibilities without exercising managerial functions within the meaning of section 1(3)(b) of the Act?

Therefore, I would find that all registered and graduate nurses employed at St. Peter's Hospital, Hamilton, Ontario, in a nursing capacity save and except Head Nurses and persons above the rank of Head Nurse constitute a unit of employees of the respondent appropriate for collective bargaining.

5470-74-U: Ward Shellington and Those Persons Named In Schedule "A" Attached Hereto (Complainants) v. IMPERIAL TOBACCO PRODUCTS (ONTARIO) LIMITED, TOBACCO WORKERS INTERNATIONAL UNION, LOCAL 323, CHARLES HILL, ALEXANDER JACKSON, SYDNEY HARKER, JOHN WYND, ALBERT BATTELL, ANSTRUTHER WILLIAMSON, GEORGE JONES, HARVEY STEWART, LESLIE COOK AND BRUCE STARKEY (Respondents).

BEFORE: George W. Adams, Vice-Chairman, and Board Members P. J. O'Keefe and J.E.C. Robinson, Q.C.

DECISION OF VICE-CHAIRMAN GEORGE W. ADAMS AND BOARD MEMBER P. J. O'KEEFE. April 2, 1975.

1. By letter dated January 8th, 1975, the solicitor for the complainants wrote the following letter to the Board:

"The Board by its decision dated July 3rd, 1974 stated in part in paragraph 34 as follows:

"...In these circumstances, provided Mr. Storie's client agrees, the Board is prepared to defer or await the outcome of arbitration. We say 'await the

outcome' because 1) if the dispute over the meaning of the collective agreement is not resolved with reasonable promptness by recourse to arbitration; 2) if the arbitration procedures have not been fair; or 3) if the outcome of arbitration is repugnant to the Act or is remedially inadequate to resolve the applicants' claims under the Act - claims based on a violation of the agreement - we will then hear such complaints in exercise of our jurisdiction. Accordingly, the Board refused to determine if a breach of a collective agreement occurred but retains jurisdiction over this dispute for these limited purposes set out immediately above..."

2. A grievance by the complainants was submitted to arbitration on August 2, 1974 and the Arbitrator Mr. J. D. O'Shea rendered his award on December 5, 1974 a copy of which we enclose. At pages 16-17 of the Award the Arbitrator stated:

"...I accordingly find that the provisions of Article 11.11 of the collective agreement apply to all employees including tradesmen and ex-apprentice tradesmen.

"I further find that the company has contravened the provisions of the collective agreement by treating the seniority of ex-apprentice tradesmen as dating from the time such employees graduated from the apprenticeship programme.

"My award therefore is that the company is directed to give full effect to provisions of Article 11.11 of the collective agreement in this matter and to date the seniority of each ex-apprentice tradesman from his original date of employment. The company is further directed to give effect to all the relevant provisions of the collective agreement in accordance with the proper seniority of the ex-apprentice tradesmen as calculated pursuant to the provisions of Article 11.11..."



3. The Board is of course aware of the fact that on September 26, 1974 the respondent union and the respondent employer entered into a new collective agreement which has seriously affected the complainants' accumulated seniority rights. The respondent union and respondent employer continue to refuse to acknowledge and give effect to the proper seniority rights of the complainants.
4. It is therefore clear that "...the outcome of arbitration...is remedially inadequate to resolve the applicant's claims under the Act..." as these claims have been expanded in our letters to the Board dated August 28, September 9 and October 4, 1974.

We therefore request the Board to schedule a hearing for two days to deal with the merits of the subject complaint including the matters referred to in our aforementioned letters to the Board and to grant such relief as may be appropriate in the circumstances."

2. This letter was circulated to the two respondents in the matter for their comments, and the Board received the following replies. The respondent company outlined its position in a letter to the Board dated January 16, 1975,

"In response to representations made by counsel for the complainants in its letter of January 8th, it is the Respondent Company's position that there is no basis for hearings before the Board to deal with the merits of the alleged complaints. This matter has been exhaustively dealt with both by the Labour Relations Board and, pursuant to its decision of July 3, 1974, paragraph 34, Mr. O'Shea in his decision of December 5, 1974.

The Respondent Company has already made representations with respect to the right of the Labour Relations Board to retain limited jurisdiction for the purposes set in in paragraph 34 of its decision. Aside from those representations, a review of Mr. O'Shea's decision clearly indicates that there is no basis to again bring this matter before the Labour Relations Board on the allegation that "...the outcome of arbitration...is remedially inadequate to resolve the applicant's claims under

the Act...". Nor is it appropriate to support such a request on further allegations made to the Board on August 28th, September 9th and October 4th respectively, all subsequent to the Board's decision of July 3rd. Both Mr. Koskie and his clients were aware that the arbitration arose out of a collective agreement that has since been renewed and amended.

In his award, Mr. O'Shea found, inter alia, that the dispute in this matter arose "under the provisions of the collective agreement between the parties which continued in effect from November 21, 1972 until July 14, 1974" (page 5); that "the parties did not formalize their agreement by signing a written document" (page 11); that the Company did publish plant seniority lists (page 12). As a result, Mr. O'Shea issued a declaratory judgement to the effect that the provisions of Article 11.11 of the collective agreement apply to all employees including tradesmen and ex-apprentice tradesmen (emphasis added) (page 16). Mr. O'Shea further directed the Company to give full effect to the provisions of that Article under the collective agreement which has now expired. In view of the fact that there was no evidence of any monetary or, indeed, other damages and the fact that the collective agreement has now expired, full effect has been given to Mr. O'Shea's decision.

The arbitrator's decision essentially indicates that the declaratory finding arose from the failure of the parties to formalize, in writing, an amendment with respect to the application of seniority to "ex-apprentice" tradesmen. In his decision and applicable to any jurisdiction retained by the Labour Relations Board, Mr. O'Shea states:

"...I do not wish to be interpreted as finding that the company acted in bad faith. Had the parties executed an agreement to revise the collective agreement to give effect to the informal arrangements between the company and the trades committee, this grievance would have been dismissed. It is not

uncommon for collective agreements to provide for departmental seniority in addition to plant seniority. Such provisions are not contrary to the Labour Relations Act. Indeed provisions establishing departmental seniority in addition to plant seniority have an element of fairness which tends to be lacking in agreements which provide only for plant seniority. The fact that the majority of the 130 tradesmen as represented by the trades committee attempted to establish a form of department seniority to the detriment of some 14 ex-apprentice tradesmen is not surprising and indeed might well be expected."

In view of the fact that a new collective agreement, dealing specifically with the issue at hand, has been negotiated and ratified by the parties and in light of the by-law passed by the Respondent Local 323 in September, 1973, there is no issue that remains to be heard. Section 31(a) of the by-law contemplates the establishment of a trades committee empowered to deal directly with the Company. Subsection (b) entitles the tradesmen to draft their own proposals without submitting them to a general membership meeting and protects the employees at large through ratification of any matters affecting tradesmen or non-tradesmen by the general membership of "the whole of any proposed agreement". That subsection further provides that there shall only be one set of negotiations with the Company.

In light of the negotiation, ratification and execution of a renewal collective agreement and the provisions of that agreement, the parties have not only satisfied any pre-existing deficiency found by Mr. O'Shea but also acted in a manner contemplated and found reasonable by the arbitrator.

For these reasons, the Respondent Company takes the position that there is no basis for having this matter referred again to the Labour Relations Board."

3. The respondent trade union outlined its position in a letter dated January 23rd, 1975, as follows:



"We have your letters of January 10, 1975 and January 20, 1975 and regret that we have been unable to reply to both of those letters until now.

To put our position briefly to you we only say that at the time the matter first came on before the Board all parties indicated their agreement to have the matter referred to arbitration and the union and the company not only agreed that they would not stand in the way of the matter proceeding by way of arbitration but the union also undertook to bear part of the cost of the same on behalf of the present applicants.

The Board's jurisdiction is confined to a consideration of whether or not section 60 of the Act has been violated. We agree with the solicitor for the applicant that that matter is still before the Board and that the Board should proceed to conduct a hearing with respect to that matter as the complaint arose under the original application. On September 26, 1974 the respondent union and the respondent employer entered into a new collective agreement which determined the seniority rights of the applicants from the effective date of that agreement until such time as a new agreement is entered into. Mr. O'Shea in his award clearly stated at page 17 of the same "Had the parties executed an agreement to revise the collective agreement to give effect to the informal arrangements between the company and the trades committee, this grievance would have been dismissed." The September, 1974 agreement was ratified by the membership and having regard to that fact and the statement made by Mr. O'Shea the Board should not look beyond September 26, 1974 but should confine any further hearing to the circumstances that occurred during the life of the preceding agreement. Therefore the respondent union takes the position that there is no proper complaint before the Board alleging any violation of the Act that relates to the most recent agreement. In fact, there is no complaint at all before the Board with respect to that new agreement.

4. After receiving this correspondence the Board directed the Registrar to list the complaint for the purpose

of enabling the complainants to show cause why the Board should entertain the complaint further. The reason for following this procedure lies in the quite unique history of the applicant's request. A short synopsis of this history is a necessary background to the instant decision.

5. The complainants filed a complaint under section 79 of the Act against the respondent company, respondent trade union and certain named individuals, alleging that they had been dealt with contrary to the provisions of section 60. This complaint alleged that all of the respondents, individually or in concert, were interfering with seniority rights of the complainants contrary to a collective agreement dated November 21, 1972 in effect between the respondent trade union and respondent company. Accordingly the complainants asked that the Board direct the respondents to refrain from so interfering and award any other appropriate relief.

6. The matter was given a May 9, 1974 hearing date and at the outset of this hearing a number of preliminary issues were raised by the respondents. They were basically three in number. First, the company objected to its status as a named respondent in the matter and counsel for the other respondents objected to the naming of individuals in a similar fashion. Second, it was argued that the matter involved an alleged breach of a collective agreement and therefore the Board ought to defer to the arbitration procedures in that agreement in an effort to facilitate the policy of the Act embodied in section 37. The last point involved a request that the Board require the complainants exhaust their remedies under the respondent trade union's constitution before resorting to the Board.

7. The Board dealt with these preliminary matters in a decision dated July 3, 1974, and the portion of that decision which is of principal importance to the complainants' request today is that portion of the decision dealing with the second preliminary issue -- deference to grievance arbitration.

8. It is clear that the basis of the complainants' claims under the Act were based upon an alleged violation of a collective agreement and a reading of the Board's jurisprudence amply demonstrates its desire to preserve the integrity of the grievance arbitration process, as well as fulfilling its own statutory obligations. To this end the Board had consistently deferred to grievance arbitration where a complaint under the Act was based upon an alleged violation of a collective agreement. However, the claims of complainants caused the Board to examine some of the limits to its policy of deference,

particularly where the arbitration process could not, or might not, provide effective relief for the violation of a statutory right. In this regard the Board had to consider whether an arbitrator could provide effective relief to the complainants in the prosecution of their claims and, as well, the Board had to consider whether arbitration would dispose of the complaint in a fair and just manner in the light of the position taken by complainants' bargaining representative. Paragraphs 32, 33 and 34 of the July 3rd, 1974 decision detail the Board's conclusions in this regard.

9. Because the complainants' claims were based upon a breach of the collective agreement and because there was reason to believe that the respondent company and respondent trade union would agree to permit the complainants to participate in the selection of a sole arbitrator, the Board concluded that it should defer to the arbitration procedure. At paragraph 32 the Board noted that even though an arbitrator appointed pursuant to a collective agreement had no jurisdiction under section 60, his declaration of the meaning of the agreement would be tantamount to the same relief available from the Board in the circumstances. But after arriving at this conclusion the Board did not simply dismiss the complaints. Rather, in an effort to dovetail its statutory obligations under the legislation with the requirements of section 37 of the Act, the Board retained its jurisdiction over the parties and the complaint in a manner set out in paragraph 34 of its decision.

10. As is reflected in the above reproduced letters of the parties, it is obvious that they did proceed to arbitration and the arbitrator upheld the complainants interpretation of the collective agreement. In our opinion, having regard to the wording of the April 5th complaint, this declaration in effect gave the complainants the same relief they would have got from this Board. It indicated to the parties that the agreement did not sanction the impugned seniority practice and, in fact, vindicated the claim of the complainants that the practice therefore had to be approved by the general membership of the respondent trade union (See paragraph 7 of the July 3rd, 1974 decision.)

11. What gives rise to the matter that comes before this Board today stems from the expiration date of the collective agreement in question - July 14, 1974. Obviously the parties were engaged in collective bargaining throughout the period of time the Board was considering the April 5, 1974 complaint. (See respondent company's letter to the Board dated July 11, 1974.) Counsel to the complainants wrote



letters to the Board dated August 28, 1974, September 9, 1974, and October 4, 1974, alleging that the respondent company and respondent trade union had entered into a collective agreement formalizing the impugned seniority practice and that the agreement had been approved by the general membership of the trade union insisted that general membership of the trade union only after the President of the trade union insisted that general membership had to accept or reject the tentative agreement in its entirety.

12. In a decision dated October 21, 1974, the Board ruled that the new collective agreement was not contrary to its July 3, 1974, decision and refused to interfere with the pending arbitration. In other words, the formalization of the impugned practice in the new collective agreement did not activate the jurisdiction retained by the Board - a jurisdiction retained over a complaint alleging a violation of a collective agreement. In fact, paragraph 12 of the Board's October 21, 1974, decision makes it quite clear that the Board considered the complainants' subsequent reference to the new agreement to constitute a new and different alleged violation of section 60 of The Labour Relations Act. And the second to last sentence in paragraph 10 makes it equally clear that this panel gave no commitment that it would hear this new complaint in the context of the original April 5th complaint.

13. Therefore, the complainants' claim of January 8, 1975, that the outcome of arbitration is remedially inadequate to resolve the applicants' claims under the Act "as these claims have been expanded in our letters to the Board dated August 28, September 9 and October 4, 1974" is entirely accurate but entirely outside the meaning of paragraph 34 of our July 3, 1974 decision. We retained jurisdiction to insure that the complainants obtained a fair resolution of their statutory complaint that was based upon an alleged violation of the collective agreement. We find that they obtained such a resolution. Accordingly, we find that that jurisdiction we retained is now exhausted.

14. Having arrived at this point it becomes apparent that the complainants' request is not a request that we exercise our retained jurisdiction, but a request that we reconsider our decision of July 3, 1974 in light of the provisions of the new collective agreement and that we permit them to amend their original complaint of April 5, 1974 with the letters to the Board dated August 28, September 9 and October 4, 1974. The American cases cited by counsel for the complainants therefore

have no application and the result, if granted, would amount to an entirely different complaint under section 60.

15 Accordingly, the request for reconsideration and the request to amend the complaint are denied. The Board's retained jurisdiction over the April 5, 1974, complaint is exhausted.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C. April 2, 1975.

Having set forth my views concerning many of the matters in issue in my dissent of September 13th, 1974, I would say only that I am in agreement with the conclusion of my colleagues that the jurisdiction retained by the majority is now exhausted.

4373-73-R: United Steelworkers of America (Applicant) v. McINTYRE PORCUPINE MINES LIMITED (Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members O. Hodges and F.W. Murray.

APPEARANCES AT THE HEARING: Burris Ormsby, H. DeGurse, P. Warrian and D. Phillips for the applicant; C.M. McKeown, Q.C. and A. Adamson for the respondent.

DECISION OF VICE-CHAIRMAN GEORGE W. ADAMS: April 3, 1975.

1. This is an application for certification.

2. The applicant seeks bargaining rights on behalf of all employees of the respondent company at its property at Schumacher, Ontario, designated as shift bosses and foremen, save and except captains and persons of equal or higher rank, office and technical employees and employees covered by the subsisting collective agreement.

3. This application was filed with the Board on September 11, 1973 and by a decision dated October 2, 1973 J.D. O'Shea, Q.C., Vice-Chairman and Board Members, O. Hodges and F.W. Murray, authorized Mr. J.A. MacDonald, Examiner, to inquire into and report to the Board on the duties and responsibilities of those persons so classified by the respondent, and thus pursuant to this direction Mr. MacDonald convened meetings of the parties at Timmins, Ontario, commencing October 23, 1973 and concluding June 29, 1974 during

which he undertook the examination of 26 persons, all of whom appeared on the lists of employees filed with the Board by the respondent.

4. The Report of the Examiner - a four volume report and consisting of 605 pages and 9 exhibits - was released to the parties on or about August 7, 1974. Both parties requested a hearing before the Board to make representations in regard to it and this hearing was conducted on October 11, 1974. Before the hearing both parties consented to the replacement of J.D. O'Shea by another Vice-Chairman of the Board. Accordingly, the panel rendering this decision consists of G.W. Adams, Vice-Chairman, and Board Members O. Hodges and F.W. Murray.

5. It is the position of the respondent that the persons sought to be included in the bargaining unit proposed by the applicant are persons who fall within the provisions of subsection 3(b) of section 1 of The Labour Relations Act, and accordingly are persons deemed neither to be employees for the purposes of the Act nor to be included in a unit for collective bargaining.

6. But the respondent raised an even more preliminary point. It drew the Board's attention to the wording of a certificate dated August 10, 1949 issued to the applicant by the Board. The certificate reads:

All employees of McIntyre-Porcupine Mines, Limited save and except shift bosses, foremen, persons above the rank of shift boss or foreman, office employees (including engineering and survey office employees), head assager, head refiner, uniformed police, guards and students temporarily employed for the summer vacation period.

7. Furthermore the recognition clause (Article 1) of the current collective agreement between the applicant and the respondent is worded in identical terms. The Board was also apprised that by a certificate dated October 2, 1973 the applicant was certified for the office and technical employees of the respondent and this certificate reads:



This Board doth certify United Steelworkers of America, as the Bargaining Agent of all office, clerical and technical employees of McIntyre-Porcupine Mines, Limited at Schumacher, save and except supervisors, shift bosses, foremen, persons of rank equal to or higher than supervisor, shift boss and foreman, assistant paymaster and records, assistant accountant, chief chemist, executive secretary and employees covered by the subsisting Collective Agreement.

The respondent therefore submitted:

It is submitted that there is no evidence before this Board of any change in the content of the job performed by shift bosses. In the absence of evidence of change in job content the Certificate issued by this Board dated the 10th day of August, 1949 and signed by Mr. P.M. Draper as Chairman, ought not to be disturbed...

It is our submission, therefore, that in considering the evidence contained in the testimony of the twenty-six shift bosses set forth in the Examiner's Report, the Board should consider the history of collective bargaining and that notwithstanding 24 years of collective bargaining between the parties we have seen no change negotiated in the description of the unit. Indeed, the collective agreement filed with the Board in this proceeding covers the two year period June 1, 1972 to May 31, 1974.

8. This submission would appear to be based upon both a form of estoppel and the Board's previous policy in regard to applications under section 95(2) of the Act. We will deal with the latter basis first. The respondent's contention that the duties and responsibilities of the persons subject to this application have not changed since 1949 is an implicit request that we treat this matter as a section 95(2) application. Previous to the recent decision of F.V. Davey Home for the Aged (Algoma) [1974] OLRB Rep. August 558, the Board has indicated

that where the parties to a collective bargaining relationship had put their minds to the issue of the disputed status of employees for the purposes of the Act and had resolved the question by their agreement the Board would not permit any one party to resile from the settlement by means of an application under section 95(2) of the Act. In such instances therefore, the Board's practice was to confine the scope of the Examiner's inquiry to "changes" in duties and responsibilities from the date of the agreement. This position and its purpose is outlined in Davis Lumber Co. Ltd. 59 CLLC ¶18,148 where at a previous certification hearing the trade union had agreed with the company's proposal that the "exclusionary line" should be drawn at the level of foremen rather than non-working foremen. In due course, the parties entered into a collective agreement with a scope clause identical to the wording of the Board's certificate. Then subsequently the trade union requested the Board to make a determination under section 68(2) [now 95(2)] of the Act in regard to these excluded individuals. In dismissing the application the Board wrote:

In reaching a conclusion in this case the Board must have consideration in particular for the following facts:

- (i) the spokesman for the union agreed to the exclusion from the bargaining unit of the persons referred to earlier;
- (ii) had there been no such concurrence, the Board would have had to conduct an inquiry into the duties and responsibilities of these persons. If, as the result of the inquiry the Board had included in the bargaining unit some or all of the persons whose status is here in issue, the Board would have had to direct that a representation vote be taken rather than have certified the applicant outright as it did in its decision of September 12, 1955;

- (iii) all but one of the persons concerned in this application occupy the same positions as they did at the time of certification and have the same powers and duties as they had at that time and the remaining one is a replacement for one of the persons who was in the excluded group at the time of the application.

It would be unconscionable to allow the union at this stage to reverse its position and use section 68(2) of the Act as a device to gain what would in the circumstances, if we were to hold that the persons in question are employees, be an unfair advantage. The application is accordingly dismissed.

9. Therefore, the Davis Lumber Co. Ltd. case (supra) stands for the proposition that a party will not be allowed to gain an unfair advantage by way of a section 95(2) application; (it is noteworthy that the F.V. Davey Home for the Aged case (supra) does not reject the Davis Lumber Co. Ltd. doctrine but rather puts a temporal limitation upon it). But it is not clear that an application for certification would fail because of the same reasoning. For example, in City of St. Catharines [1966] OLRB Rep. January 270 the Board, acting upon the agreement of the parties, ruled that certain people were not included in the bargaining unit and subsequently the parties wrote into their agreement a clause that expressly excluded them from the scope of the agreement. In dismissing the application under section 79(2) [now 95(2)] the Board made the following observations:

Again, in a proper case, a decision of the Board as to the status of certain persons may be of assistance to the parties in negotiating a new collective agreement, i.e., where the extent of the bargaining rights that the union has at that time is in issue. The section ought not to be used, however to enable an application to pave the way for what is in effect a request for voluntary recognition of a union as bargaining agent for a group of employees not



presently covered by an agreement, i.e., as a substitute for a certification application. In one sense, a question may be said to arise in such circumstances as to the status of certain persons but, in our opinion, that is not the sense in which the phrase is used in section 79(2) of the Act. What useful purpose in furtherance of bargaining for a collective agreement could be served by a determination of this Board as to the status of the seven persons here under consideration? The only purpose that readily comes to mind is that the union might seek to have the employer agree to widen the scope of the bargaining unit defined in the collective agreement to include any of the persons whom we might find to be employees. However, the union could not insist on their inclusion in the agreement as a matter of right. The union is not without remedy it could apply to the Board to be certified as bargaining agent on behalf of such persons, and on an application of that nature, the union would legitimately be entitled to a ruling as to their status.

But even if we were to conclude that the Davis Lumber Co. Ltd. doctrine ought to prevent even a subsequent application for certification by a party to an earlier exclusionary agreement, the respondent in this case has failed to establish that the applicant is gaining some kind of an unfair advantage by reason of this application for certification. For example, in the Davis Lumber Co. Ltd. case the trade union had avoided a representation vote by agreeing to the exclusion of all foremen and for this reason the Board responded as it did.

10. The other possible but related viewpoint to the respondent's submission is the implicit contention that the Board has already determined the status of these persons and therefore the trade union is now estopped from raising this issue again or at the very least the application should be subject to the Board's policy in regard to applications for reconsideration. (The Board raised the point in RCA Limited [1973] OLRB Rep. November 596 although no decision was made in relation

to it.) But this argument is based upon the assumption that the Board put its mind directly to the status of the persons subject to this application during the previous applications. We have no evidence of this. We have no evidence that in 1949 or in 1973 the Board made an explicit determination of their status. Rather in each instance it would appear that the Board relied upon an agreement of the parties. While it is probable that the agreement to exclude the shift bosses and foremen in 1949 was based upon their assumed managerial status it can be contended that their recent exclusion from the office and clerical unit was based more upon the concept of appropriateness or more realistically that because of the passage of time since 1949 they should not be denied the opportunity of an official determination of their status for the purposes of the Act. In effect the applicant is arguing that with the metamorphosis of managerial decision-making since 1949 (if only because of the applicant's existing collective agreement) and the evolved jurisprudence of this Board the status of these people is now in doubt. It can also be argued that if a respondent cannot point to substantial prejudice the Board ought not to hold parties to the terms of an earlier bargain where that bargain deprives a group of persons the very coverage of the Act and, as noted above, the respondent has not established any such prejudice. Therefore, for all of these reasons we see thing in the background to the instant application that dissuades us from entertaining it on its merit.

11. We agree that the application of section 1(3)(b) of the Act is a preliminary determination in a matter of this kind but a few observations can be made before hand. We have considered all the evidence in regard to the preliminary issue - evidence that will be outlined in some detail below - and this evidence does indicate that the foremen share a community of interest that might entitle them to a separate bargaining unit were it not for the Board's policy in regard to fragmentation. Therefore the applicant's position is in apparent conflict with a fundamental Board policy. Unfortunately very little argument was addressed to the Board on the need to grant a separate and distinct bargaining unit in these circumstances and therefore unless an "all employee" tag-end unit would sweep in employees who have not had effective notice of this application we are not going to make a determination on this issue. Furthermore, if other employees are

not affected by the application the issue raised by the applicant is academic and therefore not in need of an answer in this application.

12. Now to review the duties and responsibilities of the people subject to this application. The respondent, McIntyre Porcupine Mines Limited, is located at Schumacher, Ontario and is engaged in the mining and refining of gold and copper. Accordingly its operations are regulated by The Mining Act of Ontario R.S.O. 1970, c. 274 and Part IX of this Act is in the form of health and safety legislation that regulates all phases of a mining operation. Without attempting to be exhaustive it is useful to note the following at this time. Part IX of The Mining Act of Ontario, section 164, stipulates the maximum hours a workman may work underground. (Section 164(2)(b) provides that "such limit does not apply to a foreman...".) Section 165 determines the qualifications of hoistmen. Section 167 provides for periodic medical examinations for all those people employed in "a dust exposure occupation". Section 169 stipulates who is responsible for complying with Part IX and by implication requires extensive supervision of a mining operation to ensure that the legislation is complied with. Section 173 requires certain kinds of personal protective equipment and clothing. Sections 174 to 206 deal with fire protection. Sections 307 to 214 deal with ventilation and dust control. The rest of the part goes on to deal more specifically with safety precautions in blasting and provides for extensive inspection procedures among other things.

13. It would appear that there are three primary divisions to the respondent's operations - the mine, the mill and the plant. An organization chart for the work force indicates that the Manager is Mr. A.A. Adamson and the chain of command or authority flows from him to a superintendent for each of these divisions and each superintendent works with an assistant.

14. The twenty-six Shift Bosses and Foremen subject to this application constitute "the first line" of supervision in each of the divisions spending all or most of their time supervising twenty to twenty-two other persons each. These latter persons are covered by the above mentioned collective agreement between the respondent and the applicant. Most of the employees supervised by each Shift Boss or Foreman work in crews



consisting of up to six or seven employees. Each crew contains a leader or subforeman who spends most of his time performing work covered by the collective agreement.

15. In the Gold Section of the mine Shift Bosses Geigel, Hauser, Howes, McAlinden, Krawchuk, O'Brien and Coulas, supervise approximately one hundred and thirty-five employees over three shifts and report to a person designated as Captain who in turn reports to the Assistant Mine Superintendent. In the Copper Section of the mine, Shift Bosses Turner, Murdoch, Leduc, Hamilton, Salamone and Zerbie, supervise approximately one hundred and twenty-six employees over three shifts and report to another Captain who in turn reports to the Assistant Mine Superintendent. Finally, there are two Maintenance Shift Bosses in the mine - Sylvester and Neamtu - who supervise forty employees on the day shift and Sylvester and Neamtu report to the Service Captain who in turn reports to the Assistant Mine Superintendent.

16. In the Mill Division Shift Bosses Russell, McKay and Young, supervise twenty-four (and sometimes up to forty) employees over three shifts and report directly to the Assistant Mill Superintendent. Maintenance Foreman Dechene supervises ten employees who work on the day shift only and he reports to the Assistant Mill Superintendent as well.

17. In the Plant Division Shop Foreman Bauer supervises twenty-two employees who work only on the day shift and he reports to Master Mechanic Pidgeon who in turn reports to the Assistant Plant Superintendent. Gardener Foreman Charleton supervises two employees who work on the day shift and he also reports to the Master Mechanic. Crushing Plant Foreman Laforge supervises four employees on the day shift and reports to the Master Mechanic. Maintenance Foreman Porter supervises six employees and reports to the Master Mechanic. Electrical Foreman Vaillencourt supervises nineteen employees who appear to work only on the day shift (subject to emergencies) and he reports to Electrical Supervisor Kleven who in turn reports to the Assistant Plant Superintendent. Timber and Carpenter Foreman Vezina supervises eleven employees on the day shift and he reports to the Master Mechanic. Finally, Yard Foreman Webber supervises fifteen employees who

work on the day shift and he too reports to the Master Mechanic.

18. In approaching the specific job duties and responsibilities of the Shift Bosses and Foreman we will try to treat each person as occupying a common job classification that contains uniform duties and responsibilities throughout the respondent's operation unless significant differences are reflected in the evidence. This approach - generally resulting in a total inclusion or exclusion of persons in identical job positions or job classifications - corresponds with the realities of industrial relations and accords with common sense. It is likely that all of the Shift Bosses and Foremen, in an organization as large as the respondent's, possess identical responsibilities and powers, although their individual perceptions, memories and abilities may fail to reflect a total uniformity in their duties. Just as important is the observation that partial exclusions or inclusions of people occupying identical job classifications (without significant differences in their job duties) would appear unfair and be difficult for the parties to administer. (This same position was taken in The Corporation of the District of Burnaby [1974] 1 Canadian LRBR 1 (BCLRB); Municipality of Metropolitan Toronto [1962] OLRB Rep. December 322; Versafood Services Limited, Institution Division, University of Guelph [1968] OLRB Rep. July 365.)

19. Before specifically outlining the duties and responsibilities of the people we want to emphasize that the Shift Bosses and Foremen operate in a highly regulated work context. As we observed above, The Mining Act of Ontario imposes numerous requirements upon both the respondent and the employees in the interests of health and safety. In an industry where many workers spend all their working hours deep below the earth's surface and where explosives are necessary, health and safety become of paramount importance to everyone engaged in the enterprise. The respondent is obliged to comply with the requirements of the legislation and is obligated to ensure that its work force complies as well. Shift Bosses and Foremen play a primary role in the enforcement of the provisions of The Mining Act of Ontario. Secondly, the respondent is a large corporate enterprise operating in a highly complex and capital intensive industry. It therefore is not surprising that many of its objectives, policies and plans are worked out long in advance of

actual implementation and its day to day operation consists of the execution of these predetermined decisions. The Shift Bosses and Foremen play a fundamental role in relaying necessary instructions to employees and in supervising the work of these employees, but the predetermined policy decisions obviously fetter their discretion and authority. Finally, the employees who they supervise are covered by a collective agreement between the respondent and the applicant and the supervisors must live and act within this document. It contains, among other provisions, job classifications; job titles; individual wage rates for each job; provisions stipulating the hours of work and overtime conditions; a procedure for transfers, promotions, demotions, upgrading and lay offs; a leave of absence provision; generally accepted limitations upon the respondent's right to discharge and discipline employees; and finally a grievance procedure. And the respondent employs an Industrial Relations Superintendent and an Assistant Industrial Relations Superintendent to give guidance in the administration of this relationship with the applicant. Therefore, because of all of these factors, it is important to understand that the Shift Bosses and Foremen operate in a very structured work environment and this structure of course has a great impact upon the degree of independent decision-making they engaged in. In fact probably it is this structure that has encouraged the present application.

#### Assignment and Inspection of Work

20. The Shift Bosses meet daily with the Captains to whom they are responsible and from whom they receive directions. This information when combined with the progress made by a previous shift - a progress recorded by the supervisors in the shifters' log - provides each Shift Boss with sufficient information to assign work to the employees under his supervision. These employees work in crews. Each crew contains a very experienced employee referred to as a Stope Leader who performs bargaining unit work but at the same time because of his experience gives directions to the stope men. The crews work in various locations underground along what a Shift Boss calls his "beat". These locations are so far apart and so deep in the mine that a Shift Boss, in the course of an eight hour shift, only covers his "beat" one or two times. More specifically, during a typical shift the Shift Boss spends five to ten minutes at each



work place and approximately fifteen minutes with each crew. Each of the Captains have a much larger "beat" and apparently the Captains visit a work place only once a week at the most. Thus the Shift Bosses are the only supervisors underground. Each of the Shift Bosses believe they are responsible for the quality and quantity of the work under their supervision; each inspects the work from this vantage point; each moves employees from one work location to another; and they instruct less experienced employees when necessary.

21. The work assignment and inspection duties of the Shift Bosses and Foremen in the Mill Division appear no less and no more routinized than those of their counterparts in the mine. They, of course, inspect the work under their direction more often but all of them indicated that they assign work; move employees around from job to job; and inspect the quality and quantity of the work performed. Each shift appears to have a Shift Leader or Subforeman who is covered by the collective agreement and who replaces the Shift Boss or Foreman when that person is absent. It is noteworthy that the next level of supervision above the Shift Bosses and Foremen in the mill is Mr. Docherty, the Assistant Mill Superintendent. There are no Captains as there are in the mine.

22. In the plant all of the foremen other than Electrical Foreman Vaillancourt, who reports to Electrical Supervisor Klevin, report to Mr. R. Pidgeon, the Master Mechanic, and his office is located in another building. Therefore these Foremen are the only level of supervision in the plant. They, like their counterparts in the mill and mine, assign work to the employees whom they supervise although they too receive instructions as to what work should be done; they move work and employees around as the need arises; and they inspect the quality and the quantity of the work.

### Safety and Supervision

23. All of the Shift Bosses and Foremen are responsible for the safety of the employees under their supervision and therefore a good deal of their supervisory work is to ensure that the provisions of The Mining Act of Ontario are complied with. This means the inspection of equipment, working conditions and the working procedures

of the employees. Any violation of the safety provisions of The Mining Act of Ontario by an employee is reported to the Captain or immediate supervisor and the employee is taken off the job and sent to that supervisor. This means that an employee working underground is suspended for the balance of the shift in that the Captain's office is at or near the surface.

#### Time Records, Overtime and Leave of Absences

24. The Shift Bosses and Foremen check the time cards of each employee under their supervision for accuracy and they fill out such other time cards as are necessary. It would appear that these documents then go directly to the paymaster. All of the Shift Bosses and Foremen can authorize overtime in emergency situations or more generally when production would otherwise be interrupted. But weekend overtime requires the authorization of a more superior supervisor although the Shift Bosses and Foremen appear to make effective recommendations in this regard. (The meaning of "effective recommendations" will be discussed below.) All of the Shift Bosses and Foremen can authorize up to a three-day absence from work without pay. Where a leave of absence in excess of three days is involved these people make recommendations.

25. Section 8.17 of the collective agreement, governing the employees, reads in part:

Leave of Absence. The Company will grant leave of absence without pay as follows:

- (a) To any employee for good cause, provided he can be spared.

#### Meetings, Offices, Salary and Security

26. It would appear that all Shift Bosses and Foremen save for the Gardener Foremen go to meetings every fifth week and these meetings are attended by undisputed managerial officers as well as the supervisors. Those attending the meetings discuss the profitability of the operations, future plans and production. Opinions are requested and decisions are often made; however, these decisions are made by the Superin-

tendent or Assistant Superintendent, either of whom convene the meetings. Other meetings that pertain to safety are held on a less regular basis. The confidentiality of the information released and discussed at the former meetings is in doubt in that the information is given to "spare shifters" - people who often replace the Shift Bosses but who are covered by the collective agreement. The Shift Bosses and Foremen have their own office or offices and are paid a salary as opposed to an hourly rate. Furthermore, they are responsible for the security of their respective areas of supervision. They possess keys to the tool storage areas; they surveil for "high grading"; they, unlike employees covered by the collective agreement, can break the seals to pumps, etc. where precious metals are accessible; and they do not have to undergo the same security checks that bargaining unit employees undergo.

#### Hiring and Probationary Employees

27. None of the Foremen and Shift Bosses play a direct role in hiring new employees, but when an employee leaves the employ of the respondent a Shift Boss or Foreman is asked whether he would rehire the person. These recommendations are recorded and the Shift Bosses and Foremen believe they are acted upon by the Personnel Department. The collective agreement provides for a sixty-day probationary period and the Shift Bosses and Foremen are required to assess the performance of the probationary employees twice during this period. The form they are required to fill out entitled Performance Review - Probationary Period - sets out the categories of quality, quantity, initiative, dependability, safety, attitude and attendance. A note on the document reads:

It is important that this report be completed on time. The qualities should be reviewed separately and in a just manner. Indicate if in your opinion the employee should be retained.

There is space on the Form for the Second Line Supervisor, Assistant Superintendent and Superintendent to make a similar assessment. Many of the Shift Bosses and Foremen indicate that they ask the Leaders or Subforemen for information when they were filling out the Form although they stressed that it was their personal recommendation



- no one else's. A number of Shift Bosses said that they had verbal discussions with the Captain about probationary employees in addition to filling out the Form. But every Shift Boss and Foreman equally stressed that the retention of the probationary employee was not their decision. The Captain or some other higher level official makes this determination apparently.

### Discharge and Discipline

28. None of the Shift Bosses and Foremen feel they can discharge an employee although most feel that they can recommend the discharge of an employee. Notably two men had made such recommendations and the recommendations were acted on. There is no system of written warnings in this work place which suggests that verbal warnings have much more significance than they otherwise have generally. The Shift Bosses and Foremen all issue verbal warnings and all consider such warnings to be a form of discipline. In fact a few of the individuals kept a written account of these warnings. But clarity in their disciplinary powers stops here. The evidence reflects some difference of opinion as to their power to issue suspensions although this ambiguity may stem from the relatively infrequent need to resort to greater forms of discipline. However, there is no doubt that if a serious infraction of company policy occurs a Shift Boss or Foreman can send the violator to a superior official. In the mine this is most often done in respect to safety violations and it effectively results in a suspension for the balance of the shift because of the distance between the surface and the work area. It would also appear that there is subsequent consultation between the Shift Boss or Foreman and the Captain or Assistant Superintendent (the Superior) in regard to the incident and also in regard to what penalty should be issued. The Shift Bosses and Foremen in the Mill Division all believe they can suspend a man on their own authority and all appear to have exercised such a power. Moreover all Shift Bosses and Foremen throughout the respondent's operations can send a man home who is significantly late or who has returned to work without a doctor's certificate after being absent without leave. An important background to these supervisory duties of the Shift Bosses and Foremen is the relative isolation of these men from other supervisory officials of the respondent. They constitute the only day to day

supervision in the mine and in the plant, and in the mill they report directly to the Mill Superintendent. Accordingly, their recitation of events and recommendations are likely to carry great weight.

#### Purchase of Materials, Vacations, Promotions and Transfers

29. The Shift Bosses and Foremen cannot purchase materials directly but each can order material from the respondent's stores by way of requisition and each can recommend the direct purchase of materials by way of requisition and often do this. The Carpenter and Timber Foreman plays a role in budgeting the purchase of the respondent's timber requirements but it can't be said he makes decisions in this regard. Rather he conveys information about the previous year's usage. However his advice is requested. The shift Bosses and Foremen are responsible for scheduling the vacations of the employees they supervise but seniority would appear to play a major role in this regard thereby routinizing the function. With respect to promotions and transfers, etc., Article 8.03 of the collective agreement reads:

In dealing with transfers, promotion, demotions, up gradings and lay offs of employees proper consideration will be given by the Company to the following two (2) factors:

1. Seniority;
2. The requirements and efficiency of operations and the ability, physical fitness, knowledge, training and skill of the individual to do the job.

When factor two is to all intents and purposes equal as between two or more employees seniority will govern.

30. Therefore "ability" is an important factor and it appears that Shift Bosses and Foremen play a significant role in making assessments and recommendations in regard to this factor. And once again, probably because of the relative remoteness of other supervisory

officials from the work place, these assessments and recommendations of the Shift Bosses and Foremen appear quite potent.

### The Grievance Procedure

31. Article 5.01 of the collective agreement reads in part:

If an employee has a matter that he has been unable to settle with his immediate shift boss or foreman, it may be taken up in the following manner and sequence:

Stage 1: By the aggrieved employee or employees and a steward in his department with the immediate shift boss or foreman. Failing a settlement within forty-eight (48) hours, then:

Stage 2: ...

All but a few Shift Bosses and Foremen are aware of their role in the grievance procedure and many claim to have settled minor grievances. However it appears that all but these very routine complaints and requests for information would be referred to stage two of the grievance procedure although it is important to note that a majority of the Foremen have never experienced such a serious grievance.

### Negotiations

32. None of the Shift Bosses or Foremen play a role in collective bargaining negotiations nor are their opinions sought in this regard.

### Bargaining Unit Work

33. None of the Shift Bosses in the Mine Division perform the kind of work executed by employees under their supervision except by way of instruction. For one hundred per cent of their time they are engaged in supervision and inspection. In the plant the following Foremen do engage in some of the work covered by the collective agreement. For example the Shop Foreman Baver spends twenty per cent of his working time in



this way; the Gardener Foreman spends seventy-five per cent of his time supervising other employees from April to November but in the winter months he performs the gardening work because at that time there is no one to supervise; Crusher Plant Foreman LaForge spends fifty per cent of his time performing such work; Timber and Carpenter Foreman Vegina engaged in non-supervisory work for twenty per cent of his working hours; and ten per cent to fifteen per cent of Yard Foreman Webber's work is of the kind bargaining unit employees perform.

34. Now having detailed what we believe to be the most salient facts pertaining to the duties and responsibilities of the persons subject to this application the relevant principles need to be examined. Whenever the Board is asked to determine whether certain persons constitute "the first level of management" difficult applications of judgment are required. Because of sheer physical size many modern enterprises have become bureaucratized and as a consequence of this one seldom finds a person or even a group of persons exercising a complete repertoire of so called management functions. In fact, it has now become trite to observe that decision-making is fragmented (or specialized) and often operates within highly regulated long-term and short-term contexts. Some persons engage exclusively in planning the long run objectives and policies of an enterprise while others operate within these then predetermined objectives and policies making the necessary day to day or short-term decisions. This allocation of responsibility when combined with the particularly fragmented or limited nature of these short-run decisions often makes it difficult to ascertain where independent decision-making and management responsibility ends and where direct execution or routine implementation of predetermined directions begins. (The Board commented on these difficulties in The Windsor Utilities Commission case [1971] OLRB Rep. May 296 at para 5 and in Federal Packaging and Partition Company Limited case [1971] OLRB Rep. July 448 at para 12.)

35. Out of these difficult applications of judgment the Board has developed "rules of thumb" through its experience and these rules are intended to assist the parties and expedite the proceedings before the Board. A few of these "rules of thumb" were reviewed by the Board in Pre-Con Murray Limited [1965] OLRB Rep. August 328, when it wrote:

...Assuming for present purposes that we are dealing with a craft bargaining unit the normal exclusion is non-working foremen and persons above that rank. Put in another way, working foremen are usually included in such units. However as in the case of the exclusion of foremen in industrial units this is a policy based on long experience that persons so designated i.e. non-working foremen in craft units and foremen in industrial units normally exercise managerial functions while working foremen in craft units and persons below the rank of foremen in industrial units eg. assistant foremen, normally do not exercise such functions. On occasion however the Board has excluded assistant foremen in industrial units and so-called working foremen in craft units because in the particular case the Board has found that the individual concerned exercised managerial functions. In all cases therefore the question always is does a person exercise managerial functions because as pointed out by counsel for the respondent this is the sole question before the Board under section 1(3)(B) of The Labour Relations Act.

The Pre-Con Murray Limited case (supra) excerpt also reveals that "rules of thumb" may differ from industry to industry. But whatever industry, "the rules of thumb" are not "theorems of Euclid" possessing stone-like qualities but rather they represent rebuttable presumptions. Thus it was observed in the Pre-Con Murray Limited case that in an industrial context the Board's long established rule of thumb is that a person classified as a foreman is excluded from the bargaining unit by section 1(3)(b) of the Act and therefore there is an onus on the party seeking to depart from this pattern. (This is an onus that must, from reasons of administrative procedure, take precedence over the onus referred to in Bakery and Confectionary Workers I.U.A. v Salmi 56 DLR (2d) 193). And this observation has important implications for the case at bar because the context is industrial

and because the Shift Bosses and Foremen have been historically excluded from collective bargaining by the parties.

36. But onus and presumptions aside any application of section 1(3)(b) requires a firm understanding of what the section means and this in turn requires an appreciation of its application in the past and most importantly its purpose. In fact, it will become obvious that the purpose of section 1(3)(b) lies at the heart of any attempt to explain and rationalize how the section has been applied in the past. The section reads:

Subject to section 80, for the purposes of the Act, no person shall be deemed to be an employee,

(b) who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations.

Unfortunately, the Act contains no definition of the terms used in this section and the Board has had to proceed by deductions. One approach it has taken is to emphasize the responsibility that a person must be shouldered within an order that section 1(3)(b) apply. To put it another way, the Board has held that a managerial function means a decision-making function. The word manager connotes a person who has effective control over an organization which in turn suggests an intrinsic responsibility that would manifest itself in a form of independent decision-making. This approach of the Board is also a response to the aforementioned bureaucratization of many business organizations which has left subordinates with job functions possessing little, if any, independent discretion - although they may retain impressive sounding titles. The Board has been sensitive to this trend and a good deal of its recent jurisprudence reflects an attempt to provide these people with collective bargaining sanctioned by the Act. The classic exposition of this approach is found in The Hydro-Electric Power Commission of Ontario case [1969] OLRB Rep. August 669 at para 8 and para 9:

With the rapid advance of technology and the use of more sophisticated manage-



ment tools, an ever increasing number of persons are becoming actively involved, in varying degrees, in all aspects of improving public relations, efficiency, productivity and in controlling the cost of production. As more persons become involved in these matters, it becomes increasingly difficult to distinguish between persons who exercise managerial functions within the meaning of section 1(3)(B) of The Act and employees. The distinction between managerial persons and employees cannot be made on the basis of titles or classifications alone. The distinction can only be based on the evidence of the duties and responsibilities exercised by such persons in the particular case. Such decisions necessarily involve an empirical determination of whether the person who may perform functions which relate to or bear upon the improvement of public relations efficiency, productivity or cost, is in fact controlling or determining the process or is merely implementing a process which has been predetermined by some person in management. It cannot be denied that these matters are properly the concern of management. However, if the person is merely implementing a decision made by another and has little latitude to use any independent discretion except in predetermined circumscribed areas, such person cannot be said to be exercising managerial functions. If, on the other hand, a person has the independent discretion to formulate policy and methods or sets the necessary guidelines for others to follow, such functions may properly be described as managerial functions. These latter functions are readily distinguishable from the functions performed by persons who merely gather or collate information which will be acted upon by a member of management.

In addition, the fact that managerial persons rely on the expertise of senior employees or employees who possess highly technical knowledge and skills, and act upon

the advice of such persons, does not change the nature of the functions exercised by the employees. The fact that an expert employee may recommend a course of action which a member of management may decide to follow does not of itself make the employee's recommendation a managerial function. Although a recommendation may be the basis of the decision taken, however, it is the decision to implement the recommendation which can correctly be described as the managerial function. If a person actively participates in the making of such decisions on a regular basis he may be said to exercise managerial functions within the meaning of section 1(3)(B) of the Act.

37. This approach predominates where persons are supervising and controlling the technical, financial and data aspects of an employer's business. (See also Rothmans of Pall Mall Canada Limited case [1964] OLRB Rep. November 381; The Corporation of the City of Hamilton [1972] OLRB Rep. July 697; Algoma Steel Corporation Limited [1970] OLRB Rep. June 365; Ferranti-Packard Electric Limited [1968] OLRB Rep. September 572.) But where the persons are engaged more in supervising other employees as oppose to the processes the employees are operating the Board has adopted a somewhat broader exclusionary test. This test stresses "the effective control or authority" one employee has over another and is best expressed in the following excerpt from the Falconbridge Nickel Mines Limited case [1966] OLRB Rep. September 379.

Most of the persons in dispute have more than one function and generally speaking it is the weight or emphasis attached to the different functions which must determine on which side of the managerial line that the persons fall. Senior or skilled employees often have more responsibilities than other rank and file employees and they exercise certain control and direction over the other employees because of their greater experience and skill. It is the Board's difficult task to determine whether the additional responsibilities are managerial functions within the meaning of section

1(3)(B) of the Act or are merely incidental to the prime purpose for which the employee is engaged (i.e. to perform work properly performed by persons within the bargaining unit). If the majority of a person's time is occupied by work similar to that performed by employees within the bargaining unit and such person has no effective control or authority over the employees in the bargaining unit but is merely a conduit carrying orders or instructions from management to the employees, the person cannot be said to exercise managerial functions within the meaning of section 1(3)(B) of the Act. On the other hand, if a person is primarily engaged in supervision and direction of other employees and has effective control over their employment relationship, even though the person occasionally performs work similar to the rank and file employees when an emergency arises or to relieve an employee during occasional periods of absence or even to perform a particularly important job requiring special skill and experience, such occasional work in no way derogates from his prime function as a person employed in a managerial capacity. When assessing a person's duties and responsibilities the Board does not look at any one function in isolation but views all functions in their entirety. As stated in the McDougall Case above referred to, titles alone are not of much assistance in determining what a person's functions really are.

While the cases cited above would seem to indicate that while a person may have minor supervisory function or very limited confidential function in matters relating to labour relations, if such functions are merely incidental to their main function and are of such a nature that they cannot be said to materially effect the employment relationship of the respondent's employees, such persons should not be excluded from collective bargaining by reason of section 1(3)(B) of the Act. Unless a person who regularly performs work similar to persons in a bargaining unit has independent discretionary powers rather than merely



incidental reporting functions which are subject to the discretion and authority of higher persons in management, there is no reason to exclude such a person from collective bargaining.

38. It is noteworthy that this test, so not to be overly exclusionary, requires that a person be primarily employed in the direction and supervision of employees and, as well, possess effective control or authority over those employees. Hence to the extent a person only incidentally supervises employees while working beside them (i.e., the lead hand, the working foreman - see Fruehauf Trailer Company of Canada Limited [1974] OLRB Rep. April 254) or to the extent that a supervisor is a mere advisor, conduit, or co-ordinator without effective control over employees (for example, see The Lakehead Board of Education [1970] OLRB Rep. February 1,331 and CUPE and Cochrane Nursing Home Limited [1972] OLRB Rep. June 618) section 1(3)(b) has no application. The conduit or co-ordinative function of supervision is most prevalent in the white collar or quasi-professional industries like those of health and social services. In these industries it can be said that through extensive formal education management objectives have been built into employees and supervisors perform co-ordinating and resource functions with little effective control or authority over individual employees; (see Toronto East General and Orthopaedic Hospital, Inc. Board File No. 5681-74-R; The Children's Aid Society of Huron County [1971] OLRB Rep. October 632; The Burlington-Nelson Hospital [1971] OLRB Rep. January 2; The Corporation of the City of Hamilton [1972] OLRB Rep. July 697; Ajax and Pickering General Hospital [1970] OLRB Rep. February 1,283; and Peterborough Civic Hospital [1973] OLRB Rep. March 154). Just as important, these latter cases graphically reflect the Board's willingness to consider the intrinsic differences between industries.

39. But the "effective control" test has not been an easy concept to apply. When can it be said that one person exercises effective control over another? One who can discipline, discharge, transfer, promote, or demote another employee surely has such effective control. And with a similar certainty one who only incidentally supervises, instructs, reports, etc. does not. But between these extremes there is a vast penumbral area. In this shadowland a person may exercise only one or two managerial type functions or make recommendations

that other decision-makers consider. Thus it is in this area that the Board has most often said it will look at the "totality" of the evidence in making its determination. And in this light one "effective" function is unlikely to be sufficient to activate section 1(3)(b) although this, of course, depends on the nature of the function. On the other hand, the totality approach means that the trappings of managerial status, as opposed to actual functions, are relevant. These trappings (offices, salary, etc.) may indicate the perspective or intent of the particular parties before the Board and this intent is of assistance when the other indicia of managerial capacity are in balance.

40. One of the most difficult situations confronting the Board in this penumbral area is applying its "effective control" test to persons who spend most of their working hours supervising the work of others and who report the progress of the work with or without making recommendations. Are these people mere conduits "carrying orders or instructions from management to the employees" or do they have effective control over the employment relationship of the people they supervise? Do these people exercise independent discretion or are they merely gatherers and collators of information which will be acted upon by a person who is truly a member of management? The incidence of this kind of problem has been increasing in recent years, again, because of the tremendous specialization in decision-making associated with corporate or organizational growth. Where great numbers of people work at a common enterprise they need to have their efforts co-ordinated and therefore many persons may be principally engaged in co-ordinating activities. Co-ordination may also become very routinized because of the enactment of rules, and policies to channel working energies with the maximum certainty and efficiency. More particularly in this latter regard, in many enterprises it has become recognized that efficiency and employee morale go hand in hand and require a consistent and deliberate application of the rules. Accordingly, in these enterprises, it has been thought unwise to give supervisors so much independent discretion that they are enabled to act precipitously or inconsistently which, in turn, has resulted in a spectrum of functional alternatives to "the foreman as king-pin". For example, the supervisor may consult with someone else before making the decision - thus giving him the benefit of another viewpoint and "cooling" the context in which

to make the decision. Or the supervisor may consult with someone else and they will make the decision in concert. Another alternative might have the supervisor reporting only the facts to someone else with this other person making the decision and taking exclusive responsibility for it. And a final variant might have the supervisor's superior making the decision on the recommendation of and after consultation with the supervisor. As a general matter, but also of note, is the fact that the independence of decision-making associated with all of these possibilities may be further muted when the employees being supervised and their employer are subject to the terms of a collective agreement. Collective agreements have become complex and sophisticated regulatory documents. These agreements may severely limit the discretion of the employer and his agents to affect materially the terms and conditions of a worker's employment through the provision of seniority systems, minutely defined job structures and grievance procedures. Overtime, promotions, transfers, demotions and wage increases may come to have an almost automatic quality to them. Supervisors must, of course, work within such provisions.

41. How has the Board responded to these particular problems in administering section 1(3)(b)? As general matters, the Board has said that it must have due regard to the nature of the industry, and to the nature of the particular business and the particular employer's organizational scheme. (See Ajax and Pickering General Hospital (supra).) It must also have regard to the perceptions of all the parties affected by its determination in analysing the evidence before it.

42. As noted above where the supervision relates more to processes than people the Board has emphasized the need of independent judgment for section 1(3)(b) to apply. People without such independence are characterized as "persons who merely gather or collate information which will be acted upon by a member of management" and even if the person accompanies the information with a recommendation the characterization generally remains unchanged. This position was articulated in The Hydro-Electric Power Commission of Ontario case (supra) at para. 9 reproduced above. However when the totality of evidence suggests that the people under scrutiny play an "important" role in the formulation of policy and are accorded various managerial privileges, the Board will consider them employed in a managerial



capacity despite the absence of the true independent decision-making emphasized in both The Hydro-Electric Power Commission of Ontario case and the Falconbridge Nickel Mines Limited case (*supra*). This is reflected in Rio Algomina Mines Limited [1970] OLRB Rep. November 865 at para. 11 where the Board ruled:

On the evidence of this case, we find that the project technicians attend meetings of the "weekly management conference program." The main purpose of the management conference program meetings is a management training tool. Such meetings are confined to supervisory staff. The persons attending these meetings are encouraged to participate by making suggestions and recommendations concerning various policy matters and proposals for changes in the collective agreement. In addition, the project technicians attend other management meetings. The project technicians also make effective recommendations with respect to managerial decisions that are regularly followed by the respondent. The project technicians appear to deal with other members of supervision outside of their own department with a degree of equality one would not expect of persons included in the bargaining unit. They give instructions and make effective recommendations to supervisors in other departments. From the knowledge gained in the preparation of their reports, the project technicians must make decisions of a managerial nature in order to make effective recommendations concerning the discontinuance and creation of product lines. On all the evidence, we find that the project technicians are more than collators of facts and conduits of information but effectively participate, as part of the management team, in the decision-making functions of management.

43. Similarly where the supervision focuses primarily on the performance of employees and thus where the supervisors may play an active role in the labour relations of the work place, the Board has again tempered the

independence emphasized in some of the preceding cases. This change in emphasis is captured in the following excerpt taken from Canadian Acme Screw & Gear Limited [1967] OLRB Rep. February 872:

In the instant case, however, the Board finds that in addition to certain reporting functions which are exercised by the time study technicians, they have other regular functions requiring the exercise of independent judgment. The time study technicians, in this case, make recommendations affecting the assigning of employees and at times affecting the reduction of the number of persons employed by the respondent. The time study technicians are involved in discussions with management with respect to the disposition of grievances, which discussions are confidential in matters relating to labour relations. They recommend that new employees be retained and are also asked to pick employees for the purposes of promotion. In addition, they represent management in dealing with union representatives and the union's time study technicians. They also represent management in resolving differences between the union's time study and the company's time study, and they act on behalf of management in assessing the union's proposal for changes in the collective agreement which would affect standards and the methods of setting standards in the future. On the basis of the uncontested evidence of the manner in which the time study technicians in this case act on behalf of management, the Board finds that the time study technicians are required to perform more than a simple reporting function and are employed in a confidential capacity in matters relating to labour relations and exercise managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act and therefore are not employees of the respondent eligible for inclusion in any bargaining unit.

44. And over a series of cases dealing with front-line supervisors this change in emphasis has evolved into

the concept of "effective recommendation" - a change which we believe is in response to the metamorphosis that industrial relations has undergone. This concept has come to mean that if a person spends most of his time supervising the work of others and makes effective recommendations that materially affect the conditions of employment of those supervised, the Board may conclude that such persons are exercising managerial functions. In this sense an effective recommendation is a serious recommendation that the evidence demonstrates is usually acted upon, and therefore a recommendation that materially affects the economic lives of employees.

45. The concept recognizes that while modern industrial relations has eliminated the foreman's role as "king pin" in many enterprises the foreman may still play an important role in the management of the enterprise - and a role that is inconsistent with the foreman's participation in trade union activities. We believe the application of this concept depends upon a clear understanding of the purpose of section 1(3)(b) - a purpose that was recently sketched by the British Columbia Labour Relations Board in The Corporation of the District of Burnaby [1974] 1 Canadian LRBR 1 at p. 3 in the following way:

The explanation for this management exemption is not hard to find. The point of the statute is to foster collective bargaining between employers and unions. True bargaining requires an arm's length relationship between the two sides, each of which is organized in a manner which will best achieve its interests. For the more efficient operation of the enterprise, the employer establishes a hierarchy in which some people at the top have the authority to direct the efforts of those nearer the bottom. To achieve countervailing power to that of the employer, employees organize themselves into unions in which the bargaining power of all is shared and exercised in the way the majority directs. Somewhere in between these competing groups are those in management - on the one hand an employee equally dependent on the enterprise for his livelihood, but on the other hand wielding substantial power over the working life of



those employees under him. The British Columbia Legislature, following the path of all other labour legislation in North America, has decided that in the tug of these two competing forces, management must be assigned to the side of the employer.

The rationale for that decision is obvious as far as the employer is concerned. It wants to have the undivided loyalty of its senior people who are responsible for seeing that the work gets done and the terms of the collective agreement are adhered to. Their decisions can have important effects on the economic lives of employees, e.g., individuals who may be disciplined for "cause" or passed over for promotion on the grounds of their "ability". The employer does not want management's identification with its interests diluted by participation in the activities of the employees' union.

More subtly, but equally as important, the exclusion of management from bargaining units is designed for the protection of employee organizations as well. An historic and still current problem in securing effective representation for employees in the face of employer power is the effort of some employers to sponsor and dominate weak and dependent unions. The logical agent for the effort is management personnel. One way this happens is if members of management use their authority in the work place to interfere with the choice of a representative by their employees. However, the same result could happen quite innocently. A great many members of management are promoted from the ranks of employees. Those with the talents and seniority for that promotion are also the very people who will likely rise in union ranks as well. In the absence of legal controls, the leadership of a union could all be drawn from the senior management with whom they are supposed to be bargaining. If an arm's length relationship between employer and union is to be preserved for the benefit of the employees, the law has

directed that a person must leave the bargaining unit when he is promoted to a position where he exercises management functions over it.

46. Thus the purpose underlying section 1(3)(b) is grounded in the prevention of a conflict of interest and in light of this purpose "the effective recommendation" test cannot be considered as an abrogation of this Board's duty to react to social change within the legislative framework it resides. We have emphasized the changes in organizational form and how these changes have stripped many jobs of any of the independence that might create the problems as mentioned in the The Corporation of the District of Burnaby (supra). But the Board must examine each situation carefully and with due regard to the principles of modern industrial relations. A more enlightened industrial relations has limited the discretion of front-line supervisors but it is a question of degree whether their decisions continue to have such important effects upon the economic lives of employees that they [the foreman] should be denied collective bargaining under the Act. (Contrast Rothmans of Pall Mall Canada Limited (supra); Algoma Steel Corporation Limited (supra); and Crown Cork and Seal Company Limited [1966] OLRB Rep. November 587 with Corp. of the County of Middlesex [1972] OLRB Rep. August 801 and Toronto Transit Commission [1967] OLRB Rep. February 878.) And the approach may differ from industry to industry. (Contrast Corporation of the City of Eastview [1965] OLRB Rep. March 639; Federal Packaging and Partition Company Limited (supra) Richardson, Bond & Wright Ltd. [1965] OLRB Rep. March 638; and Burns & Co. Limited [1965] OLRB Rep. April 1 with Ajax and Pickering General Hospital (supra); Peterborough Civic Hospital (supra); Essex Health Association [1970] OLRB Rep. November 824; The Burlington-Nelson Hospital (supra); The Children's Aid Society of Huron County [1971] OLRB Rep. October 632; The Corporation of the City of Hamilton [1972] OLRB Rep. July 697.) Each case has to be considered on its own merits - generalizations beyond this point are not possible. But an important decision outlining the delicate nature of the decision-making required is Algoma Steel Corporation Limited. [1970] OLRB Rep. June 365. In that case most of the persons in dispute held job titles of supervisors, planners and analysts of a variety of types spending their entire working hours supervising the work of others. The following extensive excerpt illustrates the penetrating approach that may be required in such circumstances.

In determining whether a person is "managerial" or "confidential", we have considered the nature of the authority and control which persons with what would appear to be management titles, such as "supervisors", exercise over persons working under them. In this regard, an important factor is the influence which they have over such persons' jobs, for example, promotions. The evidence in the instant case is that many of the persons in dispute periodically complete assessment forms evaluating the performance of persons working under them, including whether they are ready for advancement. These forms, which in all cases are completed by their immediate supervisor, by themselves, would indicate that the employment future with the respondent of those persons assessed would be materially affected by the report. On the other hand, it would seem that the assessment forms have definite limitations vis-a-vis their effect on the employment status of the persons concerned. Higher supervision and the personnel office evaluate the assessments and do not necessarily accept them at face value or act on the recommendations contained therein without further inquiries. There are, however, certain restrictions as to what management can do notwithstanding the content of the assessment forms because of the personnel policies and procedures of the respondent.

Moreover, many of the clerical and technical employees on whom an assessment is made are covered by a collective agreement between the applicant and the respondent or by a collective agreement between the respondent and Local 2251 of the United Steelworkers of America, which agreement would appear to cover what can best be described as "plant" employees. The provisions of the agreements covering wages, working conditions and, in particular, seniority circumscribe the discretionary authority of the supervisory staff for persons covered by the agreements. Where the persons concerned are not covered by either of the above referred to collective agreements the assessment forms might have



wider application and be of greater significance. Even in those instances, however, it would seem from the evidence that the immediate supervisor often fulfils what is essentially a reporting function and that higher supervision and the personnel staff of the respondent have the real responsibility for deciding the employment future of the persons concerned with the company.

Many of the persons in dispute asserted that they had the authority to hire, discharge and discipline persons working under them or to effectively recommend the same. A reading of the Examiner's Report, however, reveals that often the persons making such claims, in fact, had not ever exercised this claimed authority. In other cases, recommendations of the above sort had been made to their own supervisors, and it was the latter persons who, after reviewing the circumstances, made the effective decision. Disciplinary action taken by many of the persons in dispute seems to be confined largely to oral reprimands.

With regard to hiring, most vacancies appear to be filled by job postings. That is to say, the job is posted and persons already in the employ of the respondent make application for the job. The applicants are initially screened by the personnel staff who in turn sometimes refer the most qualified candidates to the person who will be their immediate supervisor for an interview. The immediate supervisor will make a recommendation either to his own superior or the personnel office as to which of the candidates is best suited to the job. We would add that while ability and qualifications are important, seniority is a potent factor in deciding which applicant gets the job. The evidence would indicate, moreover, that it is only during the probationary period that the immediate supervisor could be in a position to make recommendations as to whether the successful applicant would remain in the job. It would still seem, nevertheless, that higher

supervision makes the ultimate decision, albeit often acting on the reports made by the immediate supervisor as to whether the person remains permanently in the job or is transferred to another job within the company, or is demoted to his former position. Only in rare and extreme circumstances would the employee be discharged. We would further point out that virtually in no instances do any of the persons in dispute in this application hire or effectively recommend the hiring of persons from "outside" the company.

A fair number of persons with whom we are here concerned testified that they participated in the grievance procedure. The collective agreement in effect between the parties provides that any employee having a "difference" shall take it up with the supervisor in charge of the section in which he works within a prescribed time period and the supervisor, within a specified period, must give a "decision". The agreement further provides that failing a settlement the difference will be considered a "grievance". There is then provision for a number of steps in a grievance procedure leading to arbitration, when the grievance has not been settled at an earlier stage. Numbers of the persons in dispute considered themselves to be in the classification of "supervisor" with whom a "difference" would be taken up. Indeed, many testified that persons working under them had taken up "differences" with them. The evidence suggests that in most instances the "difference" was settled at that level. Settlements or decisions made at this initial stage, from the evidence, appear to have been largely of a routine nature and not truly managerial in character. Where, however, the "difference" was not settled and became a "grievance" the supervisor rarely played any role in the subsequent grievance and arbitration procedures other than to outline the "difference" to higher supervision and possibly appear as a witness, should the grievance proceed to

arbitration. In our view, where the degree of participation in the grievance procedure is very restricted in its scope, taken by itself, it is not sufficient to confer on the "supervisors" concerned the status of management nor does it give them a confidentiality in matters relating to labour relations.

In quite a few instances, persons with job titles which might on their face suggest that they were members of management had less than a handful of persons working under them. Moreover, the evidence suggests the existence of a whole hierarchy of managerial personnel above these "supervisors". In some instances, the numbers of persons working under them ranged as high as a few dozen. On the other hand, some persons in dispute and more particularly some of the persons classified as analysts had no one working under them. Sometimes the evidence is that the above persons spend a high proportion of their time supervising the persons under them. Not infrequently, however, the type of supervision is of a routine and prescribed nature. Moreover, the decisions they are called upon to make frequently fall within a policy framework established by the respondent. In other words, there is little scope for the exercise of individual discretion. Alternatively, the independent decisions which they can make are so circumscribed as not to be truly managerial in nature. Some of the persons in dispute do have the authority to make the latter type of decision. More often, they can only provide information and/or make recommendations upon which recognized managerial personnel, in the final analysis, make decisions.

The exercise of discretion and the ability to make independent decisions is a particularly thorny problem in the case of those persons classified as planners and analysts. We are inclined to the view that those persons in the foregoing classifications whose jobs entail the making of independent decisions or who can make effective recommendations with regard



to such matters as job evaluation, methods analysis and improvements, and the setting and maintenance of incentives and bonuses, do exercise managerial functions and may also be employed in a confidential capacity in matters relating to labour relations because of the use that is made of their work in negotiations with the applicant union. A prerequisite to such a determination, however, is that their decisions and recommendations influence or affect in some way the wages or working conditions or the very jobs of other persons in the employ of the respondent. Notwithstanding even the exercise of a considerable amount of independent discretion, if a person only provides material or data but does not have any influence on the decisions that are made based on the material or data, then the attributes which are associated with the exercise of managerial authority do not attach to such persons. Rather, they are only advisory technical employees.

Counsel for the respondent urged the Board in making its determinations to consider whether there was an inherent conflict between the duties and responsibilities which certain of the persons in dispute perform and those performed by bargaining unit employees. The evidence of a member of management contained in the Examiner's Report would indicate that, in this regard, the respondent is referring to persons in the bargaining unit represented by Local 2251 of the United Steelworkers of America as well as those in the bargaining unit represented by the applicant. Counsel for the respondent particularly related this submission to the evidence of analysts in the Industrial Engineering Department, many of whom testified that they considered that the nature of their work is or potentially is in conflict with the work of bargaining unit employees. That is to say, some testified that their work might have the effect of eliminating jobs or cutting down on the amount of time taken to do certain jobs. Such a result, it was argued, was bound to be opposed by the persons affected and hence the conflict.

We would first point out that in this application the Board is concerned not only with bargaining unit employees but also with all employees of the respondent regardless of whether or not they are represented by a trade union. With regard to the submission of counsel for the respondent, as outlined in the above paragraph, we would simply state that where a person's job functions are clearly identified with the interests of management as opposed to rank-and-file employees, this is one factor which may make such person an integral part of management.

47. This reasoning must be contrasted with the more summary reasoning of the majorities in The Windsor Utilities Commission case (supra) and The Prestolite Company, Division of Eltra of Canada Limited [1973] OLRB Rep. July 387. More importantly to the extent that the exclusion of the supervisors in The Windsor Utilities Commission case is based primarily upon "the fact almost 100% of the non-working foreman's time is spent in the performance of such supervisory functions and virtually no physical work is performed" we would decline to follow it. With all due respect, to base a decision upon the fact that a person performs no "bargaining unit" work is a circular argument. The principle issue is whether the person in question exercises managerial functions and the fact the person performs supervisory work exclusively does not in itself determine the application of section 1(3)(b) as the "white collar" cases demonstrate. The Board must go on to consider whether the supervisory duties in combination with other responsibilities permit a person to affect materially the economic lives of employees - a fact that would place the person in a fundamental conflict of interest. The supervisors considered in The Prestolite Company, Division of Eltra of Canada Limited case (supra) did possess a number of other responsibilities which may have compelled the Board to the outcome it arrived at. However the last sentence in paragraph 5 of its decision is a statement that gives us some concern. It reads:

However, the evidence clearly establishes that the set-up supervisors spend ninety per cent of their time performing functions which are clearly distinguishable from functions performed by the bargaining unit employees

and are functions falling within the realm of management functions. The supervisory functions performed by the set-up supervisors are clearly distinguishable from and are of a higher order than the "supervisory" functions performed by lead hands. The lower order of supervisory functions exercised by lead hands is normally exercised while they are engaged in work similar to that performed by other bargaining unit employees. Apart from the set-up functions, the set-up supervisors normally perform no physical work or work which is similar to work of bargaining unit employees. Although the set-up supervisors are at the bottom rung of the management ladder, they exercise functions which are clearly and historically of the class of functions which are the duties and responsibilities of management. The direction and supervision of the work force, when performed for the majority of a person's workday, cannot properly be characterized as bargaining unit work.

48. If this sentence is to be understood as ruling that supervisory work by itself is of such nature that people performing it can never be placed in the bargaining unit of the employees they supervise or cannot be granted a bargaining unit of their own, we disagree. History is history and this Board must be prepared to adapt to new forms of organization in the work place. Moreover cases like Algoma Steel Corporation Limited; Ajax and Pickering General Hospital; and Peterborough Civic Hospital establish that supervisory work is not intrinsically antithetical to collective bargaining.

49. Now we must apply these foregoing principles to the facts outlined above. Do the Shift Bosses and Foremen subject to this application exercise duties and responsibilities that materially affect employees to such an extent that if they were found to be employees they would be faced with a potential and significant conflict of interest? We think this question must be answered in the affirmative.

50. All of the Shift Bosses and most of the Foremen are the only supervisors in day to day contact with the rest of the work force (a very large work force working under very difficult conditions) and this fact magnifies the impact



of their duties and responsibilities. No one can deny the fact that this supervision results in the need to discipline employees and the discipline is either provided by the supervisor directly in the form of verbal reprimands and suspensions for at least the balance of the shift, or issued by a Captain, the Master Mechanic or an Assistant Superintendent on the recommendation of and after a discussion with the supervisor: (Most of the supervisors believe they had the duty to make such recommendations and the evidence establishes that discussions take place between the responsible people).

51. The supervision provided by the Shift Bosses and Foremen also consists in directing employees from location to location and from job to job on occasion. These directions affect the rate of pay an employee (their incentive payments or their job rate) and if the directions are not complied with another occasion for discipline arises.

52. Shift Bosses and Foremen check the time cards of all employees for accuracy and while this function in itself is not determinative (see Sarnia Lumber and Builders Supply Limited [1963] OLRB Rep. April) they are the only effective check because no other supervisor attends the work locations on a regular basis. Shift Bosses and Foremen assess the performance of probationary employees and make recommendations in regard to the retention of such individuals and while they did not make the final decision their recommendations appear to be acted upon. Similarly they make recommendations in regard to promotions where the ability of an employee is a relevant consideration (ability is a very important consideration under the agreement) and do not make the final decision. However, the recommendations appear to be determinative generally (most of the supervisors believed this to be the case) and this consistency is logical because, once again, these people are literally the only supervisory contact with the employees.

53. Other duties of a less conflicting nature are the authority to grant up to three days off without pay; the duty to insure that no "high grading" occurs; the supervisor's position at the first step of the grievance procedure; the authority to authorize overtime in emergencies; and the supervisor's role in the scheduling of vacations. They are less conflicting because an employee is entitled to a leave of absence as a matter of right for good cause; the employees go through other security procedures to prevent "high grading"; all Shift Bosses and Foremen admitted to a very

limited authority to settle grievances at the first stage of the grievance procedure; overtime is only authorized by them in emergency situations; and the scheduling of vacations appear to be a routinized procedure that has caused few problems. But all of these duties exist and they must have a cumulative impact on our final determination.

54. Finally, we come to the meetings convened by the superintendents on production and safety, and the fact that the supervisors have their own office, requisition material, are paid on a salary basis, and do not go through security checks. We are of the opinion that these facts do not create any real conflict of interest as outlined by The Corporation of the District of Burnaby case. However they do go to suggest how management officials and other employees tend to view the Shift Bosses and Foremen. There is no evidence that the meetings consider very confidential information and there is no evidence that anyone other than the Chairman of the meeting makes decisions. But the meetings accompanied by the other above mentioned "trappings" of a supervisor's job suggest that the employees must perceive the Shift Bosses and Foremen as aligned with the interests of management which in turn may raise all the problems associated with section 56 and section 12 of The Labour Relations Act.

55. Having regard to all of this evidence we must find that the Shift Bosses and Foremen subject to this application are employed in a managerial capacity and in a confidential capacity in matters relating to labour relations and therefore they are not employees for the purposes of the Act.

56. Before concluding we want to address ourselves to the applicant's reference to two recent cases of the Canada Labour Relations Board - Saskatchewan Wheat Pool Employees' Association v. Manitoba Pool Elevators 74 CLLC ¶16,091 and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 879 v. Niagara Fall Bridge Commission 74 CLLC ¶16,098. (The applicant also referred the Board to a 1973 decision of the British Columbia Labour Board - Cominco Ltd. and Office and Technical Employees Union Local 1672. However the decision is without reasons and therefore of no assistance.)

57. Section 107 of The Canada Labour Code R.S.C. 1970, c. L-1 defines an employee as:

"any person employed by an employer and includes a dependent contractor and a private constable, but does not include a person who performs management functions or is employed in a confidential capacity in matters relating to industrial relations."

58. Section 125(4) reads:

"Where a trade union applies for certification as the bargaining agent for a unit comprises of or including employees whose duties include the supervision of other employees, the Board may, subject to subsection (2), determine that the unit proposed in the application is appropriate for collective bargaining."

59. In light of the jurisprudence detailed above it is our initial impression that the provisions on their face do not create powers in the Canada Labour Relations Board that this Board lacks although section 125(4) eliminates any of the problems raised by our policy in relation to the fragmentation of bargaining units. We do not see section 125(4) as a solution to the conflict of interest or arm's length purpose of section 1(3)(b). But, of course, only future application of the provision will determine this and there is some recent indication that our impression is not completely accurate. But be this as it may, the two cases relied upon by the applicant do not support the conclusion that the Shift Bosses and Foremen working for the respondent should be considered as employees under our legislation. In the Manitoba Pool Elevators case (supra) "country elevator managers" were ruled to be employees under the Canada Labour Code and they would probably be found to be employees under the Ontario Labour Relations Act although, once again, we would have to decide whether an "all employee" unit is necessary. These people possessed very little independent discretion and had very little supervisory authority over an assistant whom they neither hired nor disciplined.

60. Similarly in the Niagara Fall Bridge Commission case (supra) the Board ruled that toll captains who supervised toll collectors and traffic directors employed



on various international bridges were not employed in a managerial capacity. The toll captains often performed the same function as the toll collectors; their dress was similar to that of the toll collectors; and they could not suspend other employees and had not even been told that they could warn employees. They did rate the performance of other employees but the Board emphasized that they were never asked to justify their ratings and the method in which the ratings were used by others was not revealed. Therefore the duties and responsibilities of the Shift Bosses and Foremen subject to this application have a much greater impact upon the job lives of employees than the individuals considered in either of the Canada Board decisions.

61. Even the most recent case of the Canada Board - a decision containing reasoning that might appear to offend our above mentioned initial impression - is not of much assistance to the applicants. In International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514 v Vancouver Wharves Limited 74 CLLC ¶16,118, the Canada Board was confronted with an application by a foremen's local for certification on behalf of a group of ship and dock foremen. The employer had vested almost total authority for its industrial relations in an employers' association which, when combined with the unique labour market structure of the longshoring industry, left the foremen with only vestigial authority. The foremen's work assignment duties were extensively regulated by a collective agreement; they requisitioned materials only in emergencies; and they did not attend management meetings. Although they could discharge employees, this effectively constituted a suspension for the balance of the shift and any possible grievances were handled by the employers' association without any participation by the foremen. Finally the applicant was a trade union that exclusively represented foremen. Whatever the result of that case under the Ontario legislation, the Shift Bosses and Foremen subject to this application - if only because of the ongoing relationship between the respondent and its employees and the other salient differences between the two industries - have much greater authority over the employees they supervise.

62. Finally we want to say that we are not unsympathetic with the purport of the excerpt from the Canada Task Force Report that was reproduced in the Vancouver Wharves Limited case (supra). (See the

extensive discussion in regard to foremen trade unions contained in Spruce Falls Power and Paper Co. Ltd. case 47 CLLC ¶16,489.) This excerpt was lucidly placed in perspective by the British Columbia Labour Board in The Corporation of the District of Burnaby case in the following way:

...Those who exercise authority over those at the bottom of the chart may still find a great many layers of authority over them. Lower echelon managers may be many in number, their range of independence and influence may be narrow, and they may each be readily replaceable. As a result, they will share many of the same weaknesses of individual bargaining power which gave rise to our law's collective bargaining policy for employees generally. In recent years, more and more voices have called for the extension of collective bargaining rights to at least the lower echelons of management. As the Woods Task Force on Labour Relations put it:

"Employees...excluded on these grounds are effectively denied access to any form of collective bargaining. This is unjust in the case of supervisory and junior managerial employees. We recommend, therefore, that the statutory right of collective bargaining be extended to these employees, subject to their being placed in separate bargaining units and in separate unions, and provided further that these unions not be permitted to affiliate with other unions or labour organizations except those composed exclusively of similar types of employees. We would not extend these formal collective bargaining rights to middle and senior levels of management, on the ground that the extension would be incompatible with efficient management and the economic welfare of the country."

In the recent revision of the statute, the B.C. Legislature responded to this problem, not

only by re-writing the definition of the managerial exclusion, but also by enacting s. 47:

47. Where a trade-union applies for certification as bargaining agent for a unit consisting of

(a) employees who supervise other employees; and

(b) any of the other employees,

the board may certify the trade-union for the unit, or for a unit consisting only of employees who supervise, or for a unit composed of some or all of the other employees.

I don't think this constitutes any radical breach with the earlier legal tradition. The provision deliberately refers to "employees who supervise other employees". This directs us back to the statutory definition of "employee", and the latter in turn excludes those "employed for the primary purpose of exercising management functions over other employees". Management is still excluded. What we do have is statutory recognition that a person who is employed as a supervisor is not thereby also a manager. To the extent that supervision and control of employees have hitherto been considered a significant indication of management functions, the law's policy is to be changed for the future. Should there still be concern about the potential conflict of interest in a unit composed of supervisors and employees, that concern is to be met by design of separate units where this is appropriate, rather than by a total denial of collective bargaining rights to supervisors.

63. As the report observes, supervisory and junior managerial employees may feel as much a need for collective bargaining as the "bargaining unit" employees they supervise. And as we observed, in discussing the jurisprudence of this Board, some supervisors are presently



entitled to the coverage of the Act. But, of course, there remain persons, such as the Shift Bosses and the Foremen subject to this application, that are not employees for the purposes of the legislation in that their duties demand an arm's length distance from the employees they supervise. Currently only section 1(3)(b) can provide this distance. The Task Force attempts to resolve this conflict by recommending that such people be placed in separate unions and that these unions not be permitted to affiliate with other unions or labour organizations except those composed exclusively of similar types of employees. A similar approach was adopted by the Legislature of this Province in relation to security guards when it enacted section 11 of the Act which reads:

The Board shall not include in a bargaining unit with other employees a person employed as a guard to protect the property of an employer, and no trade union shall be certified as bargaining agent for a bargaining unit of such guards and no employer or employers' organization shall be required to bargain with a trade union on behalf of any person who is a guard if, in either case, the trade union admits to membership or is chartered by, or is affiliated, directly or indirectly, with an organization that admits to membership persons other than guards.

64. Some years ago the Board attempted adjudicatively to accomplish a very similar objective in relation to office bargaining units when in the Electric Auto-Lite case [1947] 47 CLLC ¶16,499 the Board ruled that the same local could not be certified as a bargaining agent for plant employees and office workers. But in 1955, after the policy had gone unchallenged in the courts, the Board reviewed the Electric Auto-Lite (*supra*) position and concluded that it was without authority to impose such a condition. In this regard the Board in the Gray case 55 CLLC ¶18,011 observed:

In establishing this principle, the Board in effect was not only exercising the power specifically vested in it by the legislation of determining the unit appropriate for collective bargaining,

but it was assuming the power of saying to a group of employees who constitute an appropriate bargaining unit that they were not free to be represented by the trade union of their choice in bargaining with their employer. Whatever the situation may have been under the legislation in force in 1947, we are unable to find anything in the present Act which confers upon the Board, either expressly or impliedly, the authority so to limit the choice of the employees in the present context.

We do not believe the Board possesses any greater power today. In fact, while some might argue that section 11 suggests a legislative policy in regard to this kind of approach, we believe that the *expressio unius est exclusio alterius* maxim precludes this Board from following by analogy. Because of the real problems attending to a precise definition of those people who should be permitted to engage in collective bargaining, a legislative solution is the only practicable approach in this area.

65. Accordingly, this application is dismissed.

DECISION OF BOARD MEMBER F.W. MURRAY: April 3, 1975.

1. While I concur with the conclusion reached in the decision and join in the finding that the shift bosses and foremen subject to this application are employed in a managerial capacity and in a confidential capacity in matters relating to labour relations and accordingly are not employees for the purposes of the Act, it is with the obiter dicta portions of the decision with which I wish to disassociate.

2. With respect to the reference in paragraph 62 to the British Columbia Labour Relations Board decision with respect to the Corporation of the District of Burnaby, it is clear that a legislature, indeed a senior government legislature (Government of Canada) already has rejected the idea of extending collective bargaining to a higher level of supervisory and junior managerial employees, including the concept of a separate bargaining unit and separate bargaining agent unaffiliated with other unions.

3. The Woods Task Force Report on Labour Relations contained quite a number of recommendations and the Government of Canada enacted legislation in keeping with a very large majority of these recommendations. It is clear this recommendation was rejected. Nothing more need be said.

DECISION OF BOARD MEMBER O. HODGES: April 3, 1975.

1. More than 65 percent membership in an applicant trade union is required to achieve outright certification. The desire for collective bargaining expressed by the employees concerned in this application is evident from the membership evidence filed with the Board. Of the 33 employees who are the subject of this application, 27 (82%) are members of the union. These employees appear substantially of the view that their community of interest is with the employees whom they supervise, who are also members of and represented by the applicant trade union in a collective bargaining relationship with the respondent employer.

2. Considering all the evidence in the Examiner's Report, it is clear on the jurisprudence of the Board that employees with duties and responsibilities like those of shift bosses and foremen, as a category or class, have been consistently excluded under 1(3)(b) of the Act.

3. The particular circumstances of this case, however, thrusts forward the question as to whether the criteria found present here is necessarily a bar to certification by the Board. My opinion is that the Board has the jurisdiction to determine and decide this issue on the facts before this panel, and that the Board is not necessarily bound by the jurisprudence, considering the community of interest and the true relationship between the employees for whom the applicant seeks bargaining rights and the respondent employer. The bargaining unit proposed is comprised solely of employees with supervisory duties and responsibilities. There is no doubt, from the extent of the membership evidence, that it is in the dry rooms of the mine where the heart and interest of these employees lie, not in the board room of the company.

4. I find no conflict with the Mining Act in a certification award covering shift bosses and foremen. Rather, my view is that the human conditions realized through collective bargaining by a union representing Shift Bosses and Foremen would strengthen the safety factor with which the Mining Act is concerned.



5. The other major concern is whether the supervisory functions would suffer in a relationship between the persons being supervised and the supervisory personnel, if certification were to be granted. In my opinion the adversary theory applies only at the bargaining table. Co-operation in the interest of optimum production would in my view be enhanced, not hindered, by certification of the applicant in this case.

6. Much of the evidence in the Examiner's Report referred to in the decision of the Chairman of this panel I cannot find to favour exclusion under 1(3)(b). The decisions of the majority however have found the weight of the evidence, considering the jurisprudence of the Board, against certification. I make my finding on the ground that I am not in the circumstances of this case bound by jurisprudence, subject to the condition that a separate local union charter be granted to the employees for whom the applicant seeks certification, which in my judgement is necessary to maintain the integrity between the supervisors and the supervised. To allow for clear cut bargaining, a separate collective agreement between the applicant trade union and the respondent employer I also consider necessary, and therefore I make that further condition to my finding.

7. Considering all of the evidence and in the particular circumstances of this case, and with the conditions attached as indicated in paragraph 6 above, I find the applicant trade union entitled to certification in the bargaining unit proposed by the applicant.

7435-74-R: Carleton University Academic Staff Association (Applicant).  
v. CARLETON UNIVERSITY (Respondent) v. Employees (Objectors).

BEFORE: T. E. Armstrong, Q.C. Chairman, and Board Members  
P. J. O'Keefe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: J. Sack, Prof. J. Vickers, Dr. D. Savage and Dr. G. Bennett for the applicant; B. Stewart, K. Kort, Dr. D. Brown, R. A. Wendt, A. Larose and C. Kelly for the respondent; no one for the objectors.

DECISION OF T. E. ARMSTRONG, Q.C., CHAIRMAN, AND BOARD  
MEMBER J.E.C. ROBINSON, Q.C.: April 4, 1975.

1. This is an application for certification of full-time academic staff of Carleton University in the City of Ottawa.

2. The applicant, not having previously proven its status before the Board, adduced the following evidence in support of its contention that it qualifies as a trade union within the meaning of section 1(1)(n) of the Act. The applicant's predecessor, the Carleton College Academic Staff Association, was formed in 1952. At its inaugural meeting on November 18, 1952 - at which twenty-six persons, comprising a majority of the members of the College's instructional staff, were present - a constitution was adopted. The constitution dealt with the essential organizational structure of the Association, including its purpose, conditions of membership eligibility, officers and the manner of their election, membership meetings, duties and responsibilities of an executive council, yearly dues and provisions for constitutional amendment. At a subsequent meeting permanent officers were elected.

3. Between 1952 and 1975, numerous constitutional amendments were made. In 1957 the name of the Association was changed to the Carleton University Academic Staff Association. There is no evidence before us to warrant a finding that the amendments were not properly made.

4. In February 1975, a revised constitution was mailed to "all faculty who were paid up members in good standing on February 7", together with an explanatory letter from the Association's President and a ballot in the following form:

"I accept the revised constitution

☐

I do not accept the revised constitution ☐ "

5. The result of the ballot was: 292 in favour of the revised constitution, 44 opposed, and 10 spoiled ballots. If this mailed referendum is treated as a vote to amend the constitution, it appears to have been carried out in accordance with the amending provisions of the constitution then in force. In any event, the entire constitution was voted upon and accepted by a substantial number of the respondent's faculty.

6. The revisions accepted in February 1975 included an expansion of the Association's purpose clause to include "the regulation of employment relations between the University and the academic staff" and the total revision of the membership clause to make all full-time academic staff ("excluding the President, Vice-President(s) and such other persons coming

within the definition of section 1(3) of the Labour Relations Act") eligible for membership. The President of the Association testified that the purpose of the revisions in February 1975 was to "clarify the Association's status and to make explicit things that had always assumed to be the fact".

7. In our view, the applicant has the essential ingredients of an "organization", including a duly adopted constitution and elected officers. It admits to membership persons who are employees covered by the Labour Relations Act. Its objects include the regulation of relations between the University and the members of the Association. It has, with minor structural alterations, existed for over twenty-two years, and has, from time to time, engaged in negotiations over salaries, pensions, tenure and other matters relating to the employment relationship. The respondent, while recognizing that it is for the Board to satisfy itself that the applicant has status, stated that it "did not oppose the Board finding the applicant to be a trade union". On the basis of the evidence and the representations of the parties, we find that the applicant is a trade union within the meaning of section 1(1)(n) of the Act.

8. Following lengthy negotiations, the parties advised the Board that, except for the classification "Department Chairman", they had reached agreement on the description of the bargaining unit, subject to the Board's concurrence. The unit agreed to, which the Board is prepared to adopt, is as follows:

"All full time academic staff and professional librarians employed by the Respondent in the City of Ottawa in the Regional Municipality of Ottawa-Carleton save & except President, members of the Board of Governors elected by the Senate, Assistant to the President, Vice President Academic, Assistant to the Vice President Academic, Deans, Assistant Deans, Directors of Schools, University Librarian, Assistant to the University Librarian & Sections Heads for Bibliographic Processing, Central Library Services & Systems."

"Note 1: The unit does not include persons engaged in non-academic administrative positions such as faculty registers, the University registrar, his associate registrars, development officers,



information officers & secretary to the Board of Governors, & persons currently employed in departments such as physical plant, finance, administrative services, student services, computer centre, planning, analysis & statistics, continuing education."

"Note 2: The unit includes teaching associates but does not include sessional lecturers (part time), technical aides, research officers, laboratory directors or supervisors, program consultant, graduate teaching assistants and persons engaged primarily in research at the University under a grant appointment nor does it include demonstrators, technical officers or field instructors other than those primarily engaged in teaching."

9. It was further agreed that the Board should determine the question of the inclusion or exclusion of the Department Chairman with the least possible delay, either by means of a further hearing by the Board itself, or by the appointment of a Labour Relations Officer, with the parties to advise the Registrar as soon as possible as to the procedure which they prefer.

10. On the basis of the revised unit description, it is clear that the applicant has filed evidence of membership on behalf of more than 65 per cent of the persons included in any unit which the Board may find to be appropriate, regardless of what disposition is ultimately made on the status of Department Chairman. The respondent contended, however, that in the peculiar circumstances of this case, the Board should order a representation vote, as it is empowered to do under section 7(2) of the Act, notwithstanding the fact that the applicant, on the membership count, is in a certifiable position. Counsel did not contend that the membership evidence was invalid in any respect; rather, he argued that there were special circumstances present in the instant case which justified a departure from the Board's virtually invariable practice of granting outright certification where it is satisfied that more than 65 per cent of the employees in the bargaining unit were members of the applicant on the terminal date.

11. Counsel's argument may be summarized as follows:

- (a) The composition of the applicant's executive council, as approved by the referendum vote in February 1975,

was subsequently altered by a by-law enacted by the executive council. This purported change, it was argued, is of dubious constitutional validity and may well have created uncertainties in the minds of the members on an important structural component of the organization. Any such uncertainties, according to the respondent, could best be resolved by a representation vote.

- (b) Having regard to the unique collegial nature of a university faculty and the well-established commitment to democratic decision-making within the faculty community, questions of trade union representation ought to be decided by a freely-conducted vote.
- (c) In a letter dated February 7, 1975, to all members, the applicant had represented that a final determination of its entitlement to be certified by the Board would be made by means of a representation vote conducted by the Ontario Labour Relations Board. In the light of this commitment to members, the Board ought to exercise its discretion under section 7(2) and direct such vote.

12. We have no hesitation in rejecting the first two arguments. Any confusion or uncertainty as to the structure of the applicant is a matter which could not be cured by any representation vote which the Board might order. It is to be noted that the respondent specifically conceded that this structural question was not being raised as a matter affecting the applicant's status as a trade union under the Act. In finding that the applicant is a trade union, we have considered this matter and have concluded, independently of any admission by the respondent, that the applicant's status is unaffected by any uncertainty - if indeed there be any - concerning the composition of its executive council.

13. As to the second argument, we have no evidence before us to support a finding that the style of government in an academic community is sufficiently unique to justify a departure from our normal practice of granting outright certification where the applicant has met the membership requirements of section 7(2) of the Act.

14. In support of its third argument, the respondent relies, in part, on the text of a letter to the Registrar dated March 20, 1975, from a person purporting to be a member of the

respondent's faculty. Although served with notice of the hearing and advised of the consequences of his failure to appear at the hearing and support the representations contained in his letter, the writer did not, in fact, appear. We cannot, therefore, treat the contents of that letter as evidence before us nor can we give it any weight in reaching our decision.

However, the respondent also relies on the following passage from the applicant's letter of February 7 which, it will be recalled, accompanied the ballot on the proposed revisions of the applicant's constitution and which, incidentally, predated all of the evidence of membership filed in support of the application:

"It should be noted that this Constitutional Referendum does NOT constitute a certification vote. According to our lawyer, these changes are necessary BEFORE CUASA can file an application requesting certification. The Labour Relations Board would administer the actual certification vote WITHOUT THE INVOLVEMENT of the officers of CUASA."

This passage, counsel contended, would naturally lead a recipient to believe that the applicant would not be certified unless and until the Board conducted a representation vote amongst the persons in the unit found to be appropriate for collective bargaining.

15. Counsel for the applicant, on the other hand, argued that the passage quoted above did not amount to a representation that a vote would necessarily be held by the Board. Rather, he argued, read in context, it merely distinguished the applicant's internal referendum on the constitutional revisions from any vote which the Board might conduct on an application for certification. He contended that, in any event, it could not reasonably be construed to detract from the clear wording of the membership documents in which members authorized the applicant to bargain collectively on their behalf and to apply for certification as bargaining agent to the Ontario Labour Relations Board.

16. Both interpretations suggested are plausible, although it seems to us that a recipient of the letter would be more likely to read it in the sense suggested by the respondent. However, it is, at the very least, equivocal. We therefore cannot reject the possibility that some may well have assumed that a representation vote would ultimately be held.



17. In some cases the Board has held that a conditional application for membership - for example, where the union undertakes to repay the money accompanying an application for membership if it does not obtain certification - is not acceptable evidence of membership under the Act: see for example De Laval Company Limited, 52 CLLC ¶17,031; Wheatley Manufacturing Limited, OLRB Monthly Reports, Dec. 1964, 457. Here, however, the applications for membership are, in terms, unqualified; the applicant union is authorized to bargain on behalf of the individual applicant for membership and is further authorized to apply for certification. There is no basis, therefore, for inferring that if the applicant union is unsuccessful in its certification attempt, the individual will withdraw his request for membership. In this sense, the commitment to membership is unqualified. There is, however, a possibility that in authorizing the applicant to apply for certification, applicants for membership believed that there would be a representation vote amongst all faculty members.

18. It is clear that we have before us sufficient documentary membership evidence to enable us to exercise our discretion and issue outright certification. The difficult and unique question before us is whether the Board ought to exercise its discretion and permit the applicant's entitlement to certification to be determined in accordance with what the individual members may have believed to be the invariable practice in matters of this sort, i.e., by a representation vote. After anxious consideration, and having carefully considered the arguments of counsel, we have concluded that it would serve no one's interest for outright certification to be granted where the affected employees may have been under the misapprehension that the faculty as a body was to be guaranteed the opportunity to vote upon the question of representation. This is especially so where, as here, this possible misapprehension has been induced, however innocently, by the applicant itself. We may add that we find nothing inconsistent about an individual applicant for membership giving his unqualified support to the applicant union and authorizing the union unreservedly to act as his bargaining agent and at the same time supporting a secret ballot vote to determine the collective views of the entire faculty on the question of representation. It is at the very least possible, in view of the contents of the letter of February 7th, that this general expectation prevailed when the membership evidence was obtained. The Board is certainly not bound to ensure that this expectation is fulfilled; however, we are of the view that the fairest and most equitable resolution of this difficult problem, and the one which is most likely to dispel any lingering dissatisfaction, is to direct a representation vote.

19. For the above reasons, we are of the view that the interests of all affected persons and the purposes of the legislation are best served by the Board exercising its discretion under section 7(2) and directing an immediate representation vote. It need hardly be emphasized that the Board's decision is based upon the unique facts of this particular case and should not be construed as a departure from the Board's long-established practice of certifying automatically on the production of documentary evidence on behalf of more than 65 per cent of the members for the appropriate unit.

20. Accordingly, we direct that a representation vote be held on a date or dates prior to April 17, 1975, to be agreed on between the parties. If, within three days of the date hereof, the parties have failed to advise the Registrar of the date or dates agreed upon, the Registrar is directed to fix a date or dates within that period. We impose these terms to ensure that all eligible voters will be given the opportunity of exercising their franchise prior to the completion of the academic term.

21. The parties are directed to meet forthwith and establish the list of eligible voters. The voting constituency is the unit agreed upon by the parties as set out in paragraph 8 above including Department Chairmen. Should any of the Department Chairmen or any other disputed persons present themselves at the poll, they shall be permitted to vote and their ballots segregated and not counted until a final determination has been made as to their eligibility. The ballots of all voters on the eligible voters' list will be tabulated immediately upon the closing of the polls and the result of the poll will be recorded and announced in the usual manner.

22. Mr. N. J. Harper, Labour Relations Officer, is hereby appointed to confer with the parties forthwith as to the voting arrangements. In all other respects, the matter is referred to the Registrar.

DECISION OF BOARD MEMBER P.J. O'KEEFFE: April 4, 1975.

I concur with the findings of the majority in this matter except with respect to the weight they apply to a passage from the applicant's letter of February 7, 1975, and their subsequent decision to order a vote under section 7(2) of The Ontario Labour Relations Act.

The applicant has submitted clear evidence of employee support evidencing the fact that 447 out of a

possible 556 employee bargaining unit have joined the applicant and that this group representing 80.3% of the bargaining unit desire to have the applicant as their bargaining agent.

The form of membership is as follows:

"CARLETON UNIVERSITY ACADEMIC STAFF ASSOCIATION

APPLICATION FOR MEMBERSHIP

Name \_\_\_\_\_ Department \_\_\_\_\_

Address: \_\_\_\_\_ Telephone No. \_\_\_\_\_

\_\_\_\_\_

I hereby apply for and accept membership in the above union and agree to abide by its constitution and by-laws. I hereby authorize the above union to bargain collectively with Carleton University on my behalf with respect to terms and conditions of employment. I hereby authorize the above union to apply for certification as bargaining agent to the Ontario Labour Relations Board.

DATE \_\_\_\_\_

Amount \$ \_\_\_\_\_ Paid by \_\_\_\_\_

Signature of applicant

Received by \_\_\_\_\_

Signature of collector "

Counsel for the respondent University while being well aware that based on the applicant's membership position that the applicant is in an automatic certification position urges this board to refrain from certifying the



applicant outright without a representation vote. In support of his request for a representation vote in this matter he argues in part based on a letter to the Board dated March 20, 1975 from a person purporting to be a member of the respondent's faculty. The writer of that letter, although served with notice of the Board's hearing, did not, in fact, appear at the hearing to support his allegations of improper conduct by the applicant. Further, counsel for the respondent University directed the Board's attention to the following letter, dated February 7, 1975, submitted by him as evidence going to the question of the status of the applicant union. The letter is as follows:

"Dear Colleague:

As you are aware, the general meeting of CUASA held January 31st directed the Steering Committee to proceed with the constitutional revisions deemed necessary by our legal advisor to permit an application seeking the certification of CUSAS as the official bargaining agent for members of the Carleton academic staff under the protection of Ontario Labour Relations Law.

Since changes to the Constitution must be proposed by the Council, the proposed changes have the unanimous approval of the CUASA Council which is recommending that you vote in favour of the revised Constitution.

It should be noted that this Constitutional Referendum does NOT constitute a certification vote. According to our lawyer, these changes are necessary BEFORE CUASA can file an application requesting certification. The Labour Relations Board would administer the actual certification vote WITHOUT THE INVOLVEMENT of the officers of CUASA. Under our existing constitution, constitutional changes of any sort require a positive vote of two-thirds of those voting provided that those in favour of the changes constitute at least one-third of the membership. This letter, a copy of the constitution as revised, and a ballot are being sent to all faculty who were paid-up members in good standing on February 7th and are therefore entitled to vote. The revised portions of the constitution have been underlined.

Yours sincerely,

'J.M. Vickers'

President, CUASA"

Counsel for the respondent, when arguing with respect to the use of the Board's discretion under section 7(2) of the Act, directed our attention particularly to the following words from the foregoing letter: "The Labour Relations Board would administer the actual certification vote WITHOUT THE INVOLVEMENT of the officers of CUASA." These words, he contends, may have led certain of the members who signed applications for membership in the applicant to believe that the applicant would not be certified to represent the employees until the Board conducted a representation vote amongst the employees in the bargaining unit. Counsel for the respondent, when arguing his case, was very careful not to allege any wrongdoing by the applicant with respect to the membership evidence, although he did rely in part on the allegations of improper conduct by the applicant alleged in the letter of March 20, 1975, already dealt with in this decision.

I could not accept the arguments by counsel for the respondent that there was a sufficient case made out to cast a cloud on the evidence of membership that would cause this board to conduct a confirmatory representation vote of the employees in the unit in the exercise of our discretion in such matters under section 7(2) of the Act.

The Board, over a great many years, has had to cope with the proper use of our discretion under section 7(2) of the Act and there is now a great body of decisions dealing with the use of this discretion. Generally, it is fair to say that this discretion is readily applied when the Board is satisfied with a petition submitted by employees who initially joined a union and subsequently have indicated to the Board within the proper time limits for such submissions that they now no longer wish to be represented by a union. Such petitioners are required to adduce evidence with respect to the voluntariness of such petition and are subject to direct examination by the Board on the matter and to cross-examination by the parties. Again, there are a number of past cases when the Board has exercised

this discretion when as a result of allegations of improper conduct the Board is satisfied on the evidence that a doubt has been cast on membership evidence. Until now, I am not aware of any occasion when the Board exercised this discretion without a full and complete inquiry into allegations of improper conduct with respect to membership evidence. In all such cases the party most adversely affected by such a decision, namely, the union, has always been notified well in advance of the hearing of such allegations and given ample opportunity to adduce its own evidence to rebut such allegations. In the instant case there are no supportable allegations of improper conduct with respect to membership evidence. There is no evidence before the Board of improper conduct. There is one piece of evidence, namely, the letter of February 7, 1975, which has been outlined in this decision which was put in by the respondent not going to the matter of the use of our discretion under section 7(2) of the Act but going to the question of the status of the applicant. Counsel for the respondent had ample opportunity to cross-examine Professor J. Vickers, the writer of the letter, with respect to the questionable paragraph in that letter referring to a Labour Relations vote. He chose, for his own purpose, not to question her on the questionable paragraph. In fairness, it could be said that Counsel for the applicant could have questioned the witness with respect to this matter also. However, we must keep in mind that this evidence was adduced going to the question of status and not to the quality of membership evidence. Consequently Counsel for the applicant was not alerted at the time to the possible consequences of this piece of evidence applied to an entirely different question relating to the use of the Board's discretion under section 7(2) of the Act.

It is of some interest to note that the bargaining unit agreed to in the instant case in a unit comprising in the main learned university professors. With this kind of applicant for union membership, and keeping in mind the type of application for membership card that they signed, I would have great difficulty in finding that the questionable paragraph in the letter of February 7, 1975, was such that they did not clearly grasp its clear meaning in the context of the whole letter, or that they could not read into the application for membership card that they subsequently signed its clear and unequivocal commitment. In the result, I would reject the respondent's request for a representation



vote and being satisfied that the applicant union represents more than 65% of the employees in the bargaining unit I would certify the applicant union outright.

6408-74-M: Victor Ledwith (Complainant) v. CANDIAN UNION OF GENERAL EMPLOYEES (Respondent).

BEFORE: G. W. Adams, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: No one appearing for the complainant; G. Miller for the respondent.

DECISION OF THE BOARD: April 7, 1975.

1. This matter is to be treated as a request for reconsideration.

2. It arises out of a complaint by the complainant under Section 76 of the Act that the respondent trade union furnish him with a copy of the audited financial statement of its affairs to the end of its fiscal year certified to be a true copy by its treasurer or other officer responsible for the handling of its funds.

3. The complainant had been furnished with financial statements signed by the respondent's General Treasurer but the complainant claimed that the statement was not a certified true copy of an audited financial statement because it was not prepared by a registered firm of chartered accountants as required by Article IX, Section 4(h) of the respondent's constitution or at least there was no indication on the face of the document that it had been prepared in accord with that article.

4. The complainant produced an undated copy of the respondent's constitution and Article IX, Section 4(h) provides:

"h. The General Secretary-Treasurer shall have the books of the Union audited each year by a registered firm of chartered accountants selected by the General Executive Board. Such audit shall be furnished to the General Executive Board and to the Convention, and any member in good standing requesting same in writing."

5. Having regard to that Article and the purported

audited financial statement filed by the respondent the Board ruled in favour of the complainant. Accordingly the Board directed the respondent to file with the Registrar, not later than December 27, 1974, a copy of its audited financial statement verified by the affidavit of its treasurer or other officer responsible for the handling and administration of its funds. The Board further directed that the respondent furnish to the complainant, by the same date, a copy of the audited financial statement together with a copy of the affidavit required to be filed with the Board attached thereto.

6. By letter dated December 23, 1974, the respondent wrote to the Board. It indicated that the absence of its lawyer from the Board's initial hearing was inadvertent and that the constitution no longer required the use of a registered firm of chartered accountants. The letter reads:

"Thank you for your letter of December 13, 1974. During my absence from the country, this hearing came on. Mr. Miller, of the firm of Miller & Charlton, had been instructed to appear, but, inadvertently, due to a misunderstanding, did not appear.

After the Convention in 1972 (February 26th), with the change in law with respect to the responsibilities of Chartered Accountants, it has been impossible financially to get "audited" statements from Chartered Accountants, and the by-laws of the Union were amended (see attached) to delete reference to a registered firm of Chartered Accountants. The statement given to Mr. Ledwith was in fact prepared by a Chartered Accountant, and the audited certificate is internal.

The report given is the "audited Financial Statement" in accordance with the by-laws of the Union, and the only statement available.

We would therefore request either a rehearing or a reconsideration of the Board's decision.

Sincerely yours,

(signature)

PM/pl  
Attachment as noted

Patrick Murphy,  
General President,  
C.U.G.E.

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## ARTICLE IX

OFFICERS AND THEIR DUTIESSECTION 4. h.

Because the financial statement is now available at the end of every month, and further because under the Labour Relation Act, we must make available a financial statement to any member in Good Standing and further because of the cost of having a registered firm of chartered accountants audit our books, is very costly, approximately \$1,200.00 per year.

Be it resolved that Article IX, Section 4, h, the word: (by a registered firm of chartered accountants selected by the General Executive Boards), be deleted.

## ARTICLE IX

SECTION 4, H, SHOULD NOW READ.

The General Secretary-Treasurer shall have the books of the Union audited each year, such audit shall be furnished to the General Executive Board and to the Convention and any member in Good Standing requesting the same in writing.

(signature)

P. Murphy,  
General President.

(signature)

Joyce Combatley,  
General Secretary-Treasurer."

7. A copy of this letter was sent to the complainant and by letter dated January 10, 1975 the complainant opposed any reconsideration or rehearing of the matter. His letter reads:



"Dear Sir:

I have received copy of letter dated December 23rd, last, from the respondent and note the following:-

- (1) Respondent states the by-laws were amended to delete reference to registered firm of Chartered Accountants, but neglects to say when this amendment took place.
- (2) Respondent further states that the statement was in fact prepared by a chartered accountant but again omits to state name of chartered accountant.
- (3) I would point out that I attended this hearing at my own expense, and ample notice was given both parties in advance of the date, therefore, I would oppose any rehearing.
- (4) Therefore, I feel my original request remains, i.e. I request a certified true copy of an externally prepared audit together with the name of Chartered Accountant.

Yours sincerely,

(signature)

---

V. Ledwith"

8. By decision dated January 20, 1975, the Board directed the Registrar to list the matter for hearing and stipulated that the respondent would be required to show cause why the Board should reconsider its decision of December 11, 1974. The parties were advised to be prepared to deal with the merits of this matter should the Board rule in favour of the respondent.

9. The complainant was notified of this hearing but did not attend.

10. Mr. Miller, counsel to the respondent told the Board that he had been instructed to attend at the Board's

hearing of November 12, 1974 but he had neglected to note this in his diary. Mr. Murphy, the President of the respondent was out of the country during this period and did not return until November 20, 1974. He testified on his return he just assumed that Mr. Miller had attended the hearing and he made no effort to inquire into the result until he received the Board's decision dated December 11, 1974. He then contacted Mr. Miller, learned of the mistake, and then wrote the letter of December 23, 1974 to the Board.

11. Generally, the Board will not reconsider a decision unless a party proposes to adduce new evidence which could not previously have been obtained by reasonable diligence and the new evidence is such that, if adduced, it would be practically conclusive or a party wishes to make representations or objections not already considered by the Board that he had no opportunity to raise previously. (International Nickel Co. of Canada Ltd. [1963] OLRB Rep. 234, 64 CLLC ¶15,493 (Ont. H.C.); Detroit River Construction Case (1962) CLLC ¶16,260). Both legs of this principle depend upon the applicant having been diligent and therefore having had no opportunity to draw the Board's attention to the object of its concern. The applicant in the case at hand and his lawyer were not diligent in that they were given notice of the hearing date in the matter by the Board. Accordingly they would not appear to come with the ambit of the principle.

12. On the other hand it could be argued that the applicant ought not to be penalized by the mistake of his lawyer and that the Board should distinguish between errors committed by the applicant itself and errors caused by the applicant's lawyer. This same kind of argument was raised in Soo Dairies Limited (1968) OLRB Rep. April 115 where a lawyer, due to a misunderstanding of Board procedure, failed to notify his clients (petitioners) of the hearing date. As a consequence they failed to attend the hearing and the applicant was certified. In denying a request that the petitioners be given their "day in court" the Board relied upon the following excerpt from Addressograph-Multigraph of Canada Limited Board File No. 14177-67-R and refused the request:

"While counsel for the intervener argued that his client should not be saddled with his mistake or the mistake of his employer, the Board is of the opinion that a client must assume responsibility for the mistake of his solicitor. It cannot seriously be argued that legal counsel can make mistakes with impunity or that their mistakes do not carry the same

weight as similar mistakes made personally by a party. We are of the view that counsel's responsibilities are no less onerous than the responsibilities imposed upon a party in any proceeding and a party cannot wade the results of mistakes made by counsel retained by the party."

13. We see no reason to deviate from any of these principles in the circumstances. One of the principal purposes of an administrative agency is to process the matters that come before it with expedition and economy. These value can only be achieved if there is finality to the Board's decision in the vast majority of cases. To rehear cases because one party forgot to attend a hearing would substantially impair this end. Accordingly the request for reconsideration is denied.

14. The Board affirms its decision of December 11, 1974.

7329-74-M: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 71 (Applicant) v. ROY GOODFELLOW PLUMBING AND HEATING LTD. (Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: Denis Power and Michael Grenier for the applicant; no one appeared for the respondent.

DECISION OF THE BOARD: April 9, 1975.

1. This is an application under Section 37(3) of the Act wherein the applicant requests the Board to modify an unsuitable provision in a collective agreement.

2. The applicant established that it has negotiated a collective agreement with the respondent which has an effective term from May 1, 1973 to April 30, 1975.

3. It was further established that the respondent told the applicant that following the execution of the agreement it would become a member of the Mechanical Contractors Association (hereinafter referred to as the M.C.A.). Accordingly, the parties provided for a grievance and arbitration procedure that utilizes a "Joint Conference Board" manned by employer representatives of the M.C.A. and representatives of the applicant.



4. The evidence indicates that the respondent did not join the M.C.A. and therefore the use of grievance and arbitration machinery peculiar to that association is unsuitable.

5. Accordingly, pursuant to Section 37(3) of the Labour Relations Act the Board amends the collective agreement by deleting Section 17.3 and all the terms contained in Section 16.0 (specifically 16.1, 16.2) and at the request of the applicant Section 17.0 is renumbered and Section 17.5 is added so that Section 17.0 in its entirety now reads:

Section 17.0 Grievance Procedures:

- 17.1 A grievance is a signed claim in writing by an employer, by the Union or by an employee that this Agreement has been violated, misinterpreted or misapplied.
- 17.2 In the event a grievance is submitted by mail and any correspondence between the parties relating to the grievance, then all such correspondence and/or grievance shall be registered mail.
- 17.3 In calculating grievance time hereinafter stated, do not include Saturdays, Sundays, or any of the Statutory Holidays as provided by this Agreement.
- 17.4 Grievance time limits may be extended by mutual consent when necessary, with each party exchanging letters of confirmation.
- 17.5 The signed grievance shall be submitted to the other party and the party to whom the said grievance is submitted shall render its decision within 10 days of the grievance delivering by hand or its posting by registered mail.

The Board further amends the Agreement by deleting all of the terms of 18.0 (specifically 18.1, 18.2, 18.3, and 18.4) and by adding Section 18.1 to Section 18.0, so that it now reads:

## Section 18.0

- 18.1 Should the parties fail to reach a satisfactory settlement of the grievance, then either party may, within 10 days of the decision referred to in Section 17.5 or, failing any such decision within 10 days of the time limited for the rendering of such decision, refer the grievance to arbitration in the manner specified in Section 37(2) of the Labour Relations Act, R.S.O., 1970, C.232.

6. It is noted that Section 18.1 is intended to incorporate the arbitration provision found in Section 37(2) of the Labour Relations Act, R.S.O. 1970, C.232 into the collective agreement between the applicant and the respondent by reference.

7427-74-R: Guelph University Firefighters Union (Applicant)  
v. THE UNIVERSITY OF GUELPH (Respondent) v. The Candian Union  
of Public Employees and its Local 1334 (Intervener).

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members  
E. Boyer and F. W. Murray.

APPEARANCES AT THE HEARING: W.I.C. Binnie for the applicant;  
A. M. Blanchet, J. E. Hurst and J. H. Mason for the respondent;  
T. Price, A. Pickersgill and W. Brown for the intervener.

DECISION OF THE BOARD: April 9, 1975.

. . .

2. This is an application for certification for a unit composed of eight fire fighters employed by The University of Guelph ("the University"). It is conceded that the employees whom the applicant seeks to represent are now covered by a collective agreement between the University and The Canadian Union of Public Employees and its Local 1334 (CUPE) which expires on April 30, 1975. CUPE was certified by the Board on April 21, 1971 for a unit of employees, including the firemen, described as follows:

"All trades, services and maintenance employees of the University of Guelph, employed or normally performing a major part of their work at its campus at Guelph save and except; supervisors, foreman, assistant foreman, persons above the rank

of supervisor, foreman or assistant foreman, Chief Fire Prevention Officer, Deputy Chief Fire Prevention Officer, persons represented by the University of Guelph Food Service Association, persons engaged in agricultural work, persons covered by the Ontario Labour Relations Board certificate dated March 17th, 1966 issued to the Canadian Union of Operating Engineers, persons covered by the Board's certificate dated June 28th, 1974 issued to the University of Guelph Staff Association, persons regularly employed for not more than 24 hours per week and students."

3. On the basis of the evidence adduced and the representations of the parties, we find that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act, and that the application is timely under section 5(4) of the Act.

4. The respondent and the intervener oppose the application on the ground that the proposed unit is inappropriate. Both argued that the firemen ought not to be carved out of the existing bargaining unit. The applicant, on the other hand, supported the unit as appropriate under the provisions of either section 6(1) or section 6(2) of the Act.

5. As noted, the firemen have been represented by CUPE as part of a trades, services and maintenance unit since 1971. Since April 1971 there have been two collective agreements between CUPE and the University, including the current one, which is now under negotiation. Previous to 1971, the firemen were represented in a similar composite unit by the Civil Service Association of Ontario, Inc. While the evidence was not precise on the point, the CSAO was the bargaining agent for that composite unit since at least 1968.

6. In his able argument in favour of a separate unit for firemen, counsel for the applicant advanced a number of arguments. First, he contended that in September 1973 CUPE had given an undertaking to release the firemen from Local 1334 and permit the bargaining rights to be transferred to the International Association of Fire Fighters (IAFF). In support of this contention, he relied on the contents of a number of letters passing between the firemen, CUPE and the IAFF, and, in particular, upon an undertaking by a national representative of CUPE in a letter to a spokesman for the firemen dated September 12, 1973, which reads, in part, as follows:



"It is unfortunate that you did not send me any copies of the correspondence, but we are not going to back on our word and are prepared to recommend to the membership that your transfer be arranged."

(underlining added)

Counsel argued that CUPE breached this undertaking in that it failed to recommend the transfer of bargaining rights to Local 1334's membership subsequent to September 12, 1973, as promised.

7. On the evidence, we accept that the undertaking contained in the letter of September 12 was not fulfilled. However, we do not see how that finding assists us in our task, which is to determine whether the unit applied for is appropriate for collective bargaining. Counsel for the applicant did not suggest that the undertaking was binding in any legal sense. He argued, however, that the September 12 letter, together with certain earlier correspondence, amounted to a concession by CUPE either (a) that the firemen themselves formed an appropriate unit for collective bargaining, or (b) that CUPE had inadequately represented the interests of the firemen in negotiations. We cannot agree. First of all, it is for the Board to determine appropriateness, and even if the inferences which the applicant invites us to draw from the correspondence are justified, appropriateness is not necessarily determined by consent. It may be noted that at no time did the respondent agree to the separation of the foremen from the existing unit, and, indeed, at the hearing the respondent resisted the application and argued in favour of the preservation of the existing unit. In any event, we do not agree that the correspondence relied upon by the applicant supports the inferences for which it contends. In our view, it represents, at most, an apparent willingness on the part of the national office of CUPE to recommend the transfer of bargaining rights to the membership of Local 1334. However, the bargaining rights are now held jointly by CUPE and its Local 1334. Nowhere in the correspondence is there any indication that Local 1334 agreed at any time to relinquish its bargaining rights. In fact, at a meeting on April 11, 1973, the membership of the Local voted to reject the request of the firemen to leave the existing bargaining unit. That position was confirmed by executive decision of the Local Union in February 1974.

8. Neither do we agree that there has been any

admission by the bargaining agent of inadequacy in its representation of fire fighters. At a meeting on April 18, 1973, members of the executive of Local 1334 agreed that if a reasonable number of the fire fighters' bargaining demands were not achieved in negotiations, a recommendation would be made to the membership that the fire fighters "be released from Local 1334 for membership in the Firefighters Association". The evidence does not establish that this precondition to release was ever met. In fact, negotiations continued and an agreement was concluded on November 9, 1973. Although the fire fighters contend that they were not satisfied with the contents of the agreement as it applied to them, it was conceded that a membership ratification meeting was held. The two fire fighters who testified on behalf of the applicant both attended the ratification meeting and neither one of them nor any other fire fighter expressed any dissatisfaction whatever with the proposed terms of settlement. Surely that would have been the appropriate time to voice dissatisfaction and to contend that the undertaking of April 18 (i.e., to release the firemen unless a reasonable number of their demands were achieved) ought to be fulfilled. In fact, the evidence does not disclose with any clarity what the fire fighters' demands were in the 1973 negotiations. We are not in a position, therefore, to reach any conclusion on the degree of success (or lack thereof) achieved by CUPE on the firemen's behalf in the 1973 negotiations.

9. Where, as here, the applicant relies on inadequate representation by the incumbent union, it is material to consider the efforts made by the firemen to advance their interests through the incumbent. On the evidence, can it be said that the firemen pursued their demands diligently and continuously during the period of alleged dissatisfaction? We think not. To begin with, it was conceded by the fire fighters that they rarely attended union membership meetings. Of particular significance was their apparent failure to attend two key meetings: one on December 11, 1974, at which consideration was given to whether a fire fighter's policy grievance should be taken to arbitration, and another on January 23, 1975, called for the purpose of approving contract proposals for the 1975 bargaining. We are not impressed by the argument advanced by the firemen that it is futile for them to attend meetings of a local union where they are vastly outnumbered by other categories of employees. Implicit in this argument is the assumption that the interests of a minority group cannot receive sympathetic consideration from the entire membership. There is no evidence to support that assumption. In fact, Mr. Pickersgill, Local 1334's recording

secretary, gave uncontroverted evidence that the membership normally supports the position of a particular interest group within the Local which takes the trouble to come to meetings and to argue in support of their proposals or demands. We find nothing unusual, therefore, in the position taken by the membership at its meeting of December 11, 1974, not to process the fire fighter's grievance to arbitration since none of the fire fighters had seen fit to come and support the grievance.

10. Counsel for the applicant argued that there is support in other legislation for separate bargaining on behalf of fire fighters. He referred to the Fire Departments Act, R.S.O. 1970, c. 169, as evidence of a legislative policy in favour of separate bargaining rights for fire fighters in Ontario. While conceding that the fire fighters employed by the University are not fire fighters under the Fire Departments Act, he pointed out that section 1(d) of that Act defines "fire fighter" to include persons engaged in fire prevention (probably the main although certainly not the sole duty of Guelph firemen) and argued that the Board should give weight to the legislative policy reflected in the Fire Departments Act in determining unit appropriateness in this case. In addition, he alluded to the specific provision in the Labour Relations Act (section 11) whereby security guards are guaranteed their own bargaining unit and argued that the Board should, by analogy, recognize that, like security guards, firemen have interests and obligations separate, distinct and severable from those of all other employees. He relied, in particular, on the aversion of his clients to threaten the safety and security of the University community by engaging in strike action.

11. We cannot agree that the legislative provisions relied upon by counsel advance his argument as to unit appropriateness. If the Legislature had intended to guarantee separate bargaining rights to firemen in the private sector, the natural legal presumption is that it would have done so in express terms as it did with security guards (section 11), and in a slightly different manner with professional engineers (section 6(3)): expressio unius est exclusio alterius. Similarly, if the Legislature had seen fit to bring firemen in the private sector under the compulsory arbitration scheme established by the Fire Departments Act and accord to firemen, municipal and private alike, separate bargaining units, it could easily have done so. In short, the legislation does not appear to us to support the conclusion that firemen are necessarily entitled to form separate bargaining units.



12. Although not doubting their sincerity, we are able to place little reliance on the testimony of the two firemen called by the applicant, to the effect that they were apprehensive about being part of a unit of employees who are free to strike. To begin with, there is no suggestion in the correspondence preceding the application that the firemen's desire to separate from the existing unit was motivated by any reason other than their desire to improve their economic position. Secondly, we were told that the fire fighters withdrew their services in a strike called by CUPE's predecessor in 1968. Thirdly, regardless of the protestations of the two individual witnesses, so long as the University of Guelph fire fighters are covered by the Labour Relations Act, they have the statutory right to strike, whether or not they have a separate bargaining unit. Even if it were a relevant consideration, it would be pure conjecture as to whether they would be more or less likely to exercise that right on their own, rather than as part of a composite unit including other employees performing campus-wide services.

13. Counsel argued, as well, that because of their distinct duties and particular training, firemen constitute an appropriate unit for collective bargaining. There is no doubt that their training and function is different from the training and function of others in the unit, but the same may be said of carpenters, electricians and all other tradesmen in the unit. Moreover, even if the application were to have been made before the CSAO, and later CUPE, had acquired the comprehensive unit set out in the current agreement, there is evidence to cast doubt on the appropriateness of a separate firemen's unit. For example, it is clear that in addition to the eight officers covered by the proposed unit, there are two auxiliary volunteer fire companies filled on a part-time basis by approximately twelve persons holding permanent positions elsewhere in the bargaining unit. One of these part-time volunteers is a locksmith and a member of the Local's bargaining committee. In addition, it appears from the fireman's "position description", filed by the applicant, that the University's Fire Division is part of a wider administrative unit known as "Physical Resources - Auxiliary Operations". It cannot be said, therefore, that the Fire Division is a totally self-contained autonomous unit; rather, there appear to be administrative and personnel links with other portions of the University.

14. Although contending that he was not bound to establish that the applicant had craft status under section

6(2) in order to succeed in establishing the unit of firemen as appropriate, counsel for the applicant contended that the applicant had, in fact, established all the preconditions for the attainment of craft status under section 6(2). In support of that argument, the applicant filed a detailed job description for "fire prevention officer" and tendered evidence as to the training given to the University's fire fighters. From the oral and documentary evidence, including an excerpt from the University's last annual report describing the work of the Fire Division, we are inclined to the view that the fire fighters are mainly engaged in fire prevention of a fairly routine nature. In any major incident, the Municipal Fire Department is responsible for fire fighting, albeit with the assistance of the officer on duty in the University's Fire Division. However, it is possible on the evidence to draw the conclusion that the persons in question exercise technical skills within the meaning of section 6(2) - although we need not make any definitive ruling on the point in view of our ultimate conclusion.

15. Whether the fire fighters or fire prevention officers "commonly bargain separate and apart from other employees through a trade union that according to established trade union practice pertains to [their] skills" is difficult to determine on the somewhat unsatisfactory evidence before us. The applicant was unable to point to a single situation under the Labour Relations Act, or, indeed, under any other provincial statute, where private-sector (i.e., non-municipal) fire fighters were separately represented. Evidence was called to show that sixty-odd documents purporting to be collective agreements between the IAFF (and/or one of its local unions) and various municipalities were on file in the Ministry of Labour's Collective Agreements Library. A copy of a letter from the IAFF asserting that "industrial fire fighters" were represented by that union at Atomic Energy of Canada (an employer not subject to provincial labour laws) and at the University of British Columbia was filed by the applicant. Even if that evidence established the second major prerequisite to craft status under section 6(2), the fact remains that there is an existing bargaining relationship, and, as the applicant conceded, the Board is entitled, even in the face of established craft credentials, to refuse to carve out the craft group under section 6(2) in the light of the existing relationship.

16. The grounds upon which the Board has, in the past, exercised its discretion under section 6(2) are set out in countless Board decisions: see, for example: The National

Cash Register Company of Canada Limited case, [1969] OLRB Rep., July, 505; Canadian Pacific Hotels Limited case, [1968] OLRB Rep., June, 282; Pre-Con Murray Limited case, [1967] OLRB Rep., Oct., 684; York University case, [1971] OLRB Rep., March, 126; Atlas Steels Company Limited case, [1965] OLRB Rep., Aug., 367; Thompson Products Limited case, [1963] OLRB Rep., Feb., 463. As these cases indicate, the relevant factors include the following: whether there has been a history of proper representation of the particular craft group in an existing unit; the existence of consecutive collective agreements; the provision in such agreements of special provisions (e.g., wages) covering the craft group; the access of the craft group to representation either in processing grievances or in negotiations; the position taken by the employer and the incumbent union in response to the attempt to carve out the craft group, etc. In general, we agree that these considerations are proper ones, although they are not exhaustive nor need all of them be satisfied in order for our discretion to be properly exercised.

17. Here the history of representation in a composite unit covers not only a period of four years under CUPE but an earlier period of at least three years under the CSAO. There is special provision in the wage schedule for firemen, including a special payment for shift work. While the firemen do not now appear to have their own shop steward, it was not suggested that there was any impediment under the CUPE constitution or Local 1334's by-laws to the selection of a fireman to represent the interests of those in the Fire Division. A member of one of the auxiliary fire companies is a member of the negotiating committee and, previously, under CSAO, a full-time fireman was President of the Local Union. While this may not be relevant to the quality of CUPE's representation, it does show that there is nothing inherent in the composite unit which precludes full and effective participation by members of a small component unit. It also tends to support the contention of the intervener that any current lack of participation by firemen in the affairs of the Local is due to their own indifference, rather than to any restrictive practices within the Local itself.

18. We wish to comment briefly on the applicant's argument that the incumbent bargaining agent has not achieved adequate economic gains on behalf of the firemen. Reference was made to the fact that while security guards were in the unit (at the time the CSAO held bargaining rights), the firemen enjoyed a differential of approxi-



mately \$100 in annual salary above that paid to security guards. Since the guards have obtained separate representation, their salary has increased so that they are now paid approximately \$2,000 more per annum than are the firemen. The applicant also pointed out that firemen employed by the City of Guelph receive, on an average, \$5,000 more per annum than do University firemen. In our view, these external comparisons are of little evidentiary value. The Board is primarily concerned not with the quality of representation—judged against external comparisons with other bargaining relationships—but, rather, with the equality of representation as between groups within the particular bargaining unit. In the instant case, there is no evidence to persuade us that the firemen have been less effectively represented than other groups within the unit. In this connection, we note particularly the evidence of the applicant's witness Hunter. When asked in examination-in-chief how the firemen had fared under CUPE, in terms of earnings, relative to other trades and service jobs in the unit, he answered "much the same".

19. During the course of the argument, questions arose as to the effect that the creation of a separate unit of firemen might have on including other established craft groups now within the bargaining unit (carpenters, electricians, etc.) to attempt to fragment the unit still further. Counsel for the applicant contended that our decision ought not to be influenced by any such hypothesis. He argued that if any group of employees appropriate for collective bargaining, craft or otherwise, could persuade the Board that it was no longer appropriately part of a composite unit, then they ought to be given their own unit. With this we agree. Each case must be examined on its own merits. We do not believe it is proper to deny any such group separate bargaining rights because of a fear that there may be further erosion or disintegration of a larger unit. However, in the particular circumstances, and for the reasons outlined above, we are not persuaded that the unit applied for is appropriate for collective bargaining under either section 6(1) or section 6(2) of the Act.

20. Accordingly, the application is dismissed.

7371-74-U: Charles L. Wildman (Complainant) v. RETAIL, WHOLE-SALE AND DEPARTMENT STORE UNION, LOCAL 414, AFL-CIO-CLC (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members  
J. D. Bell and P. J. O'Keefe.

APPEARANCES AT THE HEARING: C. L. Wildman for the complainant;  
H. Buchanan and R. Connely for the respondent.

DECISION OF THE BOARD: April 11, 1975.

. . .

2. This is a complaint filed under section 79 of the Act where it is alleged that the grievor Charles Wildman, has been treated by the respondent trade union contrary to its duty of fair representation under section 60 of the Act.

3. Mr. Wildman has been employed as a "cutter" for approximately eleven months in the meat department at the Main Street branch store of Dominion Stores Limited in Galt, Ontario. At all material times his terms and conditions of employment were governed by a collective agreement entered into between the respondent and Dominion Stores.

4. On the morning of January 25, 1975, Mr. Wildman approached the meat manager, Mr. Gordon Shirrat, and told him that he was considering resigning his position and was giving him a week's notice. Mr. Shirrat appears to have accepted the resignation and immediately informed the incumbent store manager, Mr. Martin who thereupon relayed the information to the personnel manager, Mr. Pierce. Mr. Wildman's resignation appears to have been the culmination of several incidents with a Mr. Bob McKay, the chief clerk in the meat department, whom Mr. Wildman admitted to having some difficulty in getting along with. The day before his resignation was a particularly upsetting day for Mr. Wildman in that he left the employer's premises at noon and did not return until the next morning. Mr. Shirrat, the meat manager, confirmed Mr. Wildman's apparent conflict with Mr. McKay and indicated that upon being told by the grievor of his intention to quit agreed with his decision if that was what he wanted. A short time later Mr. Wildman told Mr. Shirrat that he was giving his notice and therefore was working his last week for the company. The evidence indicates that because of the grievor's difficulties with Mr. McKay and his alleged record for excessive absenteeism, the employer was disposed to accept Mr. Wildman's resignation.

5. The next day Mr. Wildman regretted his decision and made some attempt to reverse it by asking Mr. Shirrat

to cancel his resignation. By this time however, the resignation had been processed and was therefore informed by the store manager that he would have to contact Mr. Pierce. On Tuesday January 28, 1975, the grievor spoke to Mr. Pierce complaining that he did not want to lose his job, and explained the reason for his conflict with Mr. McKay and requested a transfer to another store. The next day Mr. Wildman met with Mr. McRobb, the new store manager, who appeared upset that the grievor had approached Mr. Pierce. At that meeting Mr. McRobb was briefed on the situation and was informed that Mr. Pierce would reply to the grievor's request by the end of the week. On Saturday, February 1, 1975, the grievor was informed that as of the end of that day he was no longer to be employed by the company in that it was not prepared to withdraw its acceptance of his resignation. At all material times during the week before his termination the grievor did not contact a representative of the respondent union on the matter of reversing his resignation from the company.

6. On the afternoon of February 1, 1975, the grievor approached the shop steward, Mr. Mank, who immediately advised that a grievance be filled. The grievor signed a grievance form in blank and the representatives of the respondent filled in the particulars at a later time. The essence of the grievance was whether indeed the grievor had handed in his resignation. It was later explained to the Board that the submission to be made was that notice in order to be "legal" would have to be in writing. Mr. Connely, the international representative for the respondent was of the view that the argument was without merit. On February 3, 1974, Mr. Mank and Mr. Bob Irwin, business representative, met with Mr. McRobb in accordance with the first step provided under the grievance procedure at which time the grievance was rejected. Mr. Connely thereupon contacted Mr. Pierce, the personnel manager. He was then appraised of the matter of the resignation as well as the grievor's particular difficulties and his alleged absentee record. Mr. Connely was of the view that the grievance itself was without merit and informed Mr. Wildman accordingly. He advised that the grievor phone Mr. Pierce personally on the chance that a place could be found for him in another store. Mr. Connely's advice was not well received by Mr. Wildman. Mr. Connely stated that he attempted to explain that his decision to refuse further processing of the grievance could be appealed to a committee of the trade union at which time the grievor hung up the telephone. Mr. Wildman denied being informed of his right to appeal Mr. Connely's decision and furthermore denied hanging up on him. He indicated that Mr. Connely



stated that "the company had set him up" and that there was nothing that the union could do for him. Mr. Connely explained that what was intended by the remark was that the company welcomed his resignation and was not prepared to reverse its acceptance of it. In this respect, the union had no basis to grieve Mr. Wildman's own decision to quit the company's employ.

7. The grievor argued that the union violated its duty of fair representation by refusing "to fight his case" beyond the first step in the grievance procedure. The Board at the hearing explained to the grievor that a trade union in order to comply with its duty of fair representation is under no duty to take every grievance to arbitration. The question before the Board is whether the trade union acted arbitrarily, discriminatorily or in bad faith in refusing to process the grievance further.

8. The evidence establishes that certain representatives of the respondent trade union in fact addressed their minds to the grievor's situation and filed a grievance. After the grievance was rejected at the first step, Mr. Connely the international representative upon discussing the matter with the employer's personnel manager resolved that the grievor had no chance for success before an arbitrator. In doing so, he addressed himself to the fact of the grievor's resignation and the company's position with respect to refusing to withdraw its acceptance of it. In this regard, the Board cannot find that the respondent treated the matter of the grievor's complaint in a superficial or perfunctory manner. There was no evidence adduced before us that would suggest that other employees in like situations would have been treated any differently by the respondent. In other words, we cannot find that the respondent acted discriminatorily. Finally, we find that the respondent took sufficient measures to assess the grievor's problem in context of its chance for pursuing a successful award before an arbitrator and discounted any merit justifying the adoption of this course of action. In short, we are satisfied that there is no evidence of bad faith on the part of the respondent in dropping Mr. Wildman's grievance.

9. The complaint is therefore dismissed.

6106-74-U: Abe Hajjar (Complainant) v. THE BECKER MILK COMPANY LIMITED (Respondent).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: William G. Charlton for the complainant; Alan J. Lenczner for the respondent.

DECISION OF THE BOARD: April 11, 1975.

1. This is a complaint under Section 79 of the Labour Relations Act wherein the complainant alleges that he has been dealt with by the respondent contrary to Section 58(a) and (c) of the Act. The complainant does not ask to be reinstated but requests a declaration that he was unlawfully terminated by the respondent as well as any amount of compensation that this Board decides he is entitled to in the circumstances.

2. It is noted that the respondent does not contest the jurisdiction of the Board to entertain the merits of this complaint although it advised the Board that this position was without prejudice to rights in any subsequent proceedings before this Board other than those that may arise out of the instant complaint.

3. It was established that the complainant is 30 years of age and that he was formally hired by the respondent on October 28th, 1971. It was further established that before managing one of the respondent's stores located at 2 Erkskine Avenue and designated as Store 102A, the complainant was first employed as a trainee manager; then as a relief manager; and finally as a manager of a store located on Kingston Road in the city of Toronto. On December 2, 1971, the complainant became employed as the manager of the Erkskine Avenue Store and continued in that capacity until he was terminated by the respondent on Monday, March 27, 1972.

4. Essentially, this is the extent of the undisputed evidence between the parties and therefore, we will now review each party's interpretation of the events leading up to the complainant's termination on March 27, 1971.

5. It is the complainant's contention that he was terminated because he attempted to organize the employees of the respondent into a trade union. In this regard, he testified that as early as October 27, 1971, he thought the respondent's operation was "fishy" although this did not dissuade him from signing a contract with the respondent on October 28, 1971, wherein, inter alia, he agreed to deliver to the respondent "a cash bond in the principal amount of One Thousand Dollars (\$1,000.00) which bond shall, in manner and form satisfactory to Beckers, guarantee to it the faithful and complete performance of

this contract by the Manager." The complainant told the Board that some time in January of 1972, he made contact with two other managers he had met while in the respondent's training programme, and together with a fourth manager they decided to form a trade union for the purposes of organizing all the managers of the respondent. The complainant could not recall the last name of one these people and of these four individuals only the grievor attended the hearing to give evidence before the Board. However, it was said that they opened a bank account with \$300.00 deposit and successfully obtained the addresses for all or a large number of the respondent's stores (presumably in the Toronto area.) The Board was not told where the bank account was located nor was a bank book produced. It was the complainant's evidence that, although no constitution was drafted, the trade union was named the Becker's Manager's Association, (B.M.A.) and the four founding members proceeded, by word of mouth to enlist the support and membership of other managers. It was said in the first few weeks that as many as 50 people were reached without actually attending at any of the respondent's stores. Rather the complainant stated that "in January, we set up meetings and then we talked about it." No minutes or records were kept of these meetings and therefore, aside from the complainant's testimony, no evidence was adduced to substantiate either the meetings or the assertion that other managers joined the Association.

6. The complainant testified that he sought professional advice in regard to the formation of the trade union by calling lawyers randomly out of the telephone book. He kept no record of the lawyers he called or the information he received. The Board was told that these lawyers gave the complainant "a rundown" of what to do but a specific lawyer was not retained because all of them wanted money and the Association didn't have enough.

7. Then, at some point in the last half of February 1972, the complainant drafted a letter which he sent to all the managers for whom he had addresses. The letter was written in both the English and Greek languages and the English version reads:

Becker Managers Union

To all the Becker Managers who are being taken advantage of, we send this message:



A group of Becker store managers have got together and formed an organization to unionize all the Becker managers including those in Montreal. Other chain store managerial groups will join our union soon afterwards, as agreed upon. The names of the organization and its founders will be withheld temporarily as advised by the Labour Department of Ontario and our solicitors.

We have already a total of 100 managers who are willing to participate with us and help create our union as soon as possible. The first requisite forms of our union have already been signed by these managers. As a start the union will have an estimate of 2000 members in Ontario - 1000 from Toronto alone.

This message is designated at this time to make you aware of the progress of our managerial organization to give you more hope for attaining all of our goals. Such goals are our rights to live as human beings. Some people are already talking about our working conditions in the news media. They are trying to help and present our sad case to the Canadian people and government. Can't we at least support them to help ourselves?

Right now, you are being enslaved by the owners of the Becker Milk Company. No man in Canada would work our kind of work for 79¢ an hour including some members of his family in this time and age - in the second half of the twentieth century - in this high cost of living. Do you know that the wages and commissions of the Becker managers - and I say their managers only - have not changed at all since the company was first established in 1957? They are only waiting for the present new manager to quit and hopefully lose his 1000 dollars bond and a new poor innocent manager to shyly walk in with a new fresh shiny 1000 dollars bond. They just love that. And you know they do. Well, we'll quit - we all quit, if necessary and let Mr. Lowe, his Chairman and their supervisors stand behind the counters. Can you imagine we have a complete shut down of all the stores just one day only?

To your information, their net profit for 1971-net profit only - was over \$1,600,000.00. The shares rose from \$8.00 a share in 1970 to \$11.85 in 1971. You must have been a good manager to have netted the company so much money for the past year, or perhaps they must have been very good at firing some of your

fellow managers who have broken wings, or something else-goodness knows what. No Becker share holder would sell you any of his shares if you try to buy any. But try your luck with Mr. Lowe or Mr. Bazos. Also with our \$1000 bond we should own over 76 stores of the Becker Milk Company. Do you own any shares as a managers, as the back bone of the whole business? Nothing. You are not even informed of what they do in that company; and yet you are everything in that company. Instead, you could be fired right on the spot, change the lock on your store door, and possibly lose your \$1000.00 as a goodbye present.

My friend, it is your right to fight this plight and get equal basis with other managers of larger chain stores. Those managers work 8 hours a day 5 days a week and get \$15,000.00 a year while in most cases you are working 17 hours a day 7 days a week where you hardly save any money worthwhile a year.

What are we animals? We deserve a lot more than we are getting now for book-keeping, mopping floors, washing windows filling up shelves, changing prices, worrying about inventory taking, serving and listening to customers' complaints and many other countless hectic duties; and all that just to please a bunch of money gobbers sitting in their offices or their homes drawing an average of \$30,000.00 a year out of the back of the poor underpaid manager.

Oh, wake up, please....

- You need to rest
- You need some kind of social life as a decent human being
- You need to sit at least once a week under one roof with the rest of your family.
- You need a Sunday off, and take your children to church and thus for a change without worrying about a spilled jug of milk.
- You need a more honest method adopted by the company for inventory taking.
- You need a two way street of understanding between you and the company
- You need to get higher wages and commissions.
- You need a lot more for your rights.

Since when you were enslaved whether you were Greek, Canadian, or any other nationality, by a bunch of misers who care for no human values or decent family life.

Get this yoke off your shoulders.

All other working classes are unionized or have some organizations to look after their rights and their human values. Why don't we get together and get unionized like them. Let us not say, Oh, after a while I'll quit. No. Don't quit - but get your rights

where you are. You and your family are being bought cheaply by Beckers. This is not the way you want to live. You all want better working conditions, higher wages and commissions, Don't argue it - get it and now. Get unionized.

We require 60% of the managers approval to form this union and implement our rights.

So, when you see the next form to be signed, sign it with confidence and a firm hand.

Good luck to all of us.

Faithfully yours,

The Union Committee

7. It is of note that the letter does not identify the complainant or any of the other members of the Association and the complainant told the Board that this secrecy was deliberate. Someone had told him to keep everyone's identity secret. Thus, the letter was prepared as it was and complainant testified further that he was careful to tell no one of his involvement in the Association before his termination from the respondent's employ in March - particularly no one associated with the management of the respondent. Two weeks after sending this letter all of the managers, including the complainant, received a letter from Harold R. Keene, the respondent's manager of Store Operations. Attached to this letter was a legal opinion purportedly emanating from the law office of Mathews, Dinsdale and Clark in Toronto. These letters read:

A. Magi, Esq.,  
Office Manager,  
The Becker Milk Company Ltd.,  
671 Warden Avenue  
Scarborough, Ontario.

Dear Mr. Magi:

You have asked for our opinion with respect to the legal status of store managers under The Ontario Labour Relations Act.

In the light of the wording of the Act and the various cases of the Board that have interpreted the statute, it is our opinion that the store managers are not employees for the purposes of the Act. It is further our opinion that if an association, which included



as members store managers, applied for bargaining rights for such managers such association would not be granted certification by the Ontario Labour Relations Board in that such association would not qualify as a trade union within the meaning of the Act. You will appreciate that a trade union is an association of employees and the store managers as we have noted would not be considered by the Board as employees for the purposes of the Act. In substance, therefore, neither the store managers nor the association of store managers would be covered under the Labour Relations Act for the purpose of obtaining bargaining rights against the Company.

I trust this is sufficient information for your purposes. If there are any further steps you might require, we would be most pleased to hear from you.

Yours truly,

MATHEWS, DINSDALE & CLARK,

Per:

John P. Sanderson

TO ALL STORE MANAGER

A number of you have been asking questions about the recent letter from a group that calls itself the Union. Obviously, the Company is as much in the dark as you as to who these people are, who are what they represent and why they don't wish to represent themselves. Certain things we do know however, and we think these matters may be of interest to you.

1. Managers are not employees for the purpose of unionization under the Ontario Labour Laws. Therefore, any group that says that they are going to organize managers into a Union and get bargaining rights is misleading all of us.

We have requested an opinion from our lawyers on this question and we are enclosing this opinion with this letter.

2. This group, whoever they are, have no legal status as a union under the Labour Laws and have not

been recognized as a trade union by the Labour Relations Board. Neither is this group part of the recognized trade union movement.

3. The Company has always followed a policy of rewarding in accordance with the ability and loyalty you bring to your task. We will continue to follow this policy in the future.
4. Many of you become managers in order to achieve independence in your work. You might ask yourselves how a union, which by nature lumps all together, can bring you individual freedom.
5. At present if a problem occurs you can go directly to the Company and get the matter sorted out. With a union you would have to rely on someone else to look after your own problems.
6. A union can offer you nothing which you cannot achieve by your own effort and initiative.

If you have any questions or comments regarding this matter contact your Supervisor. If you feel any further clarification is needed, please feel free to contact the undersigned at any time.

Yours sincerely,

Harold R. Keene,  
Manager, Store Operations.

8. The complainant said that he sent many other letters to the managers before March 27, 1972, but none of them were filed with the Board. He also stated that the Association convened numerous meetings before this date; in fact the Association is alleged to have convened a meeting at the home of someone by the name of Harry (another manager) the very night before the complainant was dismissed. But again, none of these meetings were corroborated by evidence outside of the complainant's own testimony.

9. The complainant exhibited a detailed recollection of the circumstances surrounding his termination on Monday, March 26, 1972. According to him he arrived at his store at 8:45 a.m. and saw Mr. Stan Brown, his immediate supervisor, waiting outside the store. Brown said to him "Hand me the

keys, you are fired." When the complainant asked him to explain, Brown is reported to have said, "We already know who all of you are. You made a big mistake and you will get nowhere. We know all about you." The complainant then asked him to explain further and in response it is said that Brown commenced to name some of the people who were at the meeting held the night before. To verify his dismissal, the complainant stated that he immediately called Harold Keene who said to him, "Oh yes, oh yes, that's right, yes, Mr. Hajjar, you are fired for sure ... Oh yes, we have been looking for you for a long time period of time. Just forget it and leave." The complainant says that he then asked Keene to reconsider because the union [was] already too strong for [Keene] to do anything about it." Whereupon Keene is reported to have replied "I don't care which stage you are in, don't forget you are dealing with animals and not human beings."

10. The only witness in support of the grievor's complaint was Mrs. Ida Thomason. However, after carefully reviewing both the detail of her testimony and the manner in which it was given, the Board is of the opinion that it can be given no weight.

11. The respondent took the position that on March 27th, 1972 it knew nothing of the complainant's involvement in trade union activities and the real cause of his termination stemmed from significant inventory shortages in his store and a statement he purportedly made to a salesman servicing his store. Mr. Stan Brown, the complainant's supervisor at the time, testified that on March 26th, 1972, the respondent's Personnel Manager telephoned him and instructed him to terminate the complainant the next day because of a large inventory shortage. He was told nothing of union activities. As a consequence of this call, he made arrangement for someone to take over the store and arrived at the store with this person on March 27, 1972 at 9:00 a.m. When the complainant arrived, Brown told him he was terminated, and according to Brown, the complainant started "shouting and cursing". However, Brown stressed that nothing was said about trade union activities and that he did not know of the complainant's involvement in such activities. Brown also stated that earlier in March or late February, he had a conversation with a Mr. Gary Kennedy, a sales representative of Williards Chocolates, who told him that the complainant had said "he was going to take the company for all it was worth". Brown said that he passed this remark along to Keene. Brown admitted that he could not recall being instructed to dismiss anyone



in the six months previous to March 1972 for inventory shortages and admitted that other managers probably had shortages at the time the complainant was dismissed and were not terminated. He further admitted that shortages are "a fact of life" and do not, necessarily, indicate dishonesty. The largest shortage he had seen without a termination, was in the range of \$800.00.

12. Gary Kennedy, an employee of Canada Dry, but a sales representative of Williards Chocolates in 1972, gave evidence. He told the Board he serviced the complainant's store in 1972 and that in the spring of that year, the complainant told him "he (the complainant) was going to take the company for all they were worth." He said that this statement arose out of a conversation about how the complainant liked the store and the company. The complainant denies making any such statement. Kennedy further testified he informed Brown about this remark and suggested that he might have trouble in the complainant's store. He reported this to Brown because after servicing the complainant's stores for three or four years he considered the remark unusual, and in serving the respondent he had come to know Brown quite well.

13. Harold Keene gave evidence and he told the Board that he decided to terminate the complainant because of: 1) the complainant's remark as conveyed to him by Brown and Kennedy; 2) confirmed inventory shortages in the complainant's store; and 3) the complainant's length of service with the respondent. Keene testified that Brown related the complainant's remark about "taking the company" to him and as a consequence, he contacted the Willard Chocolate Company and asked to see Gary Kennedy. After Kennedy came to his office and confirmed the complainant's remark, he began to inquire into the complainant's inventory situation. It was determined that on December 7, 1971, the complainant's store had an inventory shortage of \$82.06. On January 17, 1972, it had an "overage" of \$465.66. But the last inventory statement (dated February 11, 1972) preceding Keene's interview with Kennedy revealed an inventory shortages of \$314.76. According to Keene, he therefore ordered another inventory check which is dated March 14, 1972 and it reveals an inventory shortage of \$674.67. In receiving this report, Keene said he decided to terminate the complainant. Apparently he receives inventory statements within seven days of the report although he has access to the information within forty-eight hours of the inventory check if he is sufficiently interested. Therefore it is somewhat odd that he waited until March 27th, 1972, to terminate

the complainant; but the evidence is silent as to the reason for the delay in that the witness was not cross-examined on this point and was not called to give reply evidence. Another inventory check was conducted on the date of the complainant's termination and this check revealed an inventory shortage of \$1,079.98.

14. Keene told the Board that he received a telephone call from the complainant on March 27th, 1972, and in the course of this conversation, the complainant is reported to have called him "a capitalist pig" and said, "I hope your children die a horrible death." Keene denied knowing of the complainant's trade union activities at this time and denied saying anything to the complainant about such activities during this conversation. He explained that the letter he sent to all of the managers - the letter and the attached legal opinion reproduced above - was in response to a number of inquiries made by managers who had received the letter from the "Union Committee". They wanted an explanation and the respondent decided to tell them what it knew. On cross-examination, Keene admitted that his letter was intended partly to dissuade them from joining such an association but he stressed that the principal purpose was only to clarify the respondent's position and knowledge in regard to the "Union Committee."

15. Keene's evidence also suggested that the respondent does not have a very systematic policy in regard to inventory shortages and the termination of employees. Any shortage over \$200 to \$300 is looked into but he, like Brown, admitted that some managers have had shortages in excess of \$600 and have not been terminated. It would appear that Keene approaches each case individually - there being no policy of automatic termination because of an unusual inventory shortage. It is of note that by decision dated October 25, 1974, the Board provided the complainant with access to all the respondent's employment records of persons who had their contracts terminated between January 1, 1971 and January 1, 1974. The complainant did not provide the Board with any evidence of a discriminatory application of the inventory policies in the instant case as a result of this access.

16. The Board's task is always a difficult one in cases of this kind and it is further complicated in this case because of the great length of time intervening between the incident giving rise to the complaint and the actual filing of the complaint. The complainant alleges that Brown and Keene specifically told him he was being terminated for trade

union activities. On the other hand, Brown and Keene deny making such statements. Thus, the complainant alleges that he was dismissed because of his trade union activities and the respondent contends that the complainant was dismissed for a business purpose. The Board has attempted to resolve the conflict between these positions by a careful examination of the evidence presented by both parties. The complainant shoulders the burden of proof in proving his allegations but direct evidence of each and every fact or conclusion of fact upon which the issue in dispute depend is not necessary. As has been often said, the Board must be prepared to make reasonable and necessary inferences from all the evidence and that which is clearly inferable from the evidence is as much proved as if it had been established by direct evidence. On the other hand, if the tribunal is unable to choose between the conflicting evidence presented by the parties - a choice that may depend upon the credibility attached to such evidence - a complainant cannot be said to have proved his case.

17. Having regard to all of the evidence before us, we cannot find that the complainant has established his allegations on the balance of probabilities. Aside from writing the "Union Committee" letter to other managers, the complainant did not substantiate his long-standing involvement in trade union activities prior to March 27, 1972. Corroborating witnesses, membership documents, bank books, constitutions, and minutes of meetings were not filed with the Board and the absence of such evidence is odd in the circumstances. Thus the Board is unsure that the complainant did anything other than write the letter to the managers. It is similarly significant that the complainant admitted that he did not approach the managers at their stores and told no official of the respondent about his involvement. He therefore engaged in no visible activities that would have linked him to the letter he wrote. Accordingly the complainant's application rests primarily upon the inference to be drawn from 1) the "Union Committee" letter; 2) the respondent's letter of reply; and 3) the statements allegedly made by Brown and Keene.

18. The "Union Committee" letter does not identify the complainant and it was not argued that the respondent's letter and enclosure went beyond the limits of freedom of speech prescribed by Section 56 of The Labour Relations Act. Furthermore, the respondent's letter sent out to the managers on or about March 11th only confirms - albeit in a self-serving manner - that it did not know who wrote the "Union Committee" letter.



19. Brown and Keene denied telling the complainant on March 27, 1972, that they had been looking for him. Similarly, Keene denied that he had told the complainant he was "dealing with animals". In fact, as pointed out by counsel to the respondent, the first such analogy is found in the complainant's letter that he sent to the managers in February.

20. If the respondent had been unable to give a credible explanation for terminating the complainant, greater weight might have been attached to the statement allegedly made by Brown and Keene. When Brown's recollection of the details of March 27th, 1972, is contrasted with his inability to remember the respondent's internal response to the "Union Committee" around the same time, his testimony suffers. But Keene's evidence established a business reason (or at least a reason unrelated to Mr. Hajjar's union activities) for the termination and this explanation is supported by both Kennedy's evidence - a person not employed by the respondent - and the inventory documents pertaining to the complainant's store. Kennedy had no apparent reason to toy with the truth and the inventory documents indicate that the complainant's store was experiencing a high shortage at or about the time he was terminated. Moreover, as of March 27th, 1972, the complainant had not been employed by the respondent for very long. In the circumstances of this case, we cannot find that Keene's failure to confront the complainant with Kennedy's information or his apparent delay in taking the action that he did undermine the respondent's explanation. Keene indicated that, as a general matter, he terminated employees on an individual basis and there was no attempt to apply consistent standards. Keene is managing a large "unorganized" operation and in such a context it may not be unusual that he would take the time that he did in terminating the complainant and that he would terminate him in the way he did. The evidence is just silent in this area and therefore we cannot find that the termination was unusual in the circumstances.

21. Therefore, in summary, when the complainant's evidence is balanced against the respondent's evidence and explanation, the Board cannot find that the complainant has established his case on the balance of probabilities. Accordingly, the complaint is dismissed.

7216-74-R: Retail Clerks Union, Local 486 (Applicant) v. ADAMS FURNITURE CO. LIMITED (Respondent).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members J. D. Bell and O. Hodges.

DECISION OF THE BOARD: April 16, 1975.

1. In a decision dated February 11, 1975, the Board appointed an Examiner to inquire into and report to the Board upon the duties and responsibilities of C. Galbraith and upon the person from whom he receives directions and to whom he reports.
2. The facts necessitating the inquiry are set out in the foregoing decision.
3. C. Galbraith carries the title of sub-store manager. It might be said at this time, as it has been said many times before by the Board, that titles alone are of little assistance in determining what a person's functions are. That determination must be made upon the evidence in each instance.
4. On the evidence contained in the Report of the Examiner, the Board finds that C. Galbraith carries on the day-to-day operation of what is referred to by the respondent as its sub-store at Prescott. No other person is employed by the respondent in the store, so that the question of managerial control, direction or discipline of employees is not an issue in this case. There is nothing whatever in the evidence indicating that Galbraith is employed in a confidential capacity in matters relating to labour relations.
5. Galbraith has the limited authority to hire persons to do maintenance and such jobs as cleaning and waxing floors. The rate to be paid for such work is laid down for him. He reports the amount paid on a petty cash voucher and sends it with other sales documents to the respondent's store at Smith's Falls of which the Prescott store is said to be a branch. Galbraith has no authority to hire and has not hired anyone to help in the sale of goods in the store. Prices to be charged for the goods are predetermined and he has no authority to allow any discount. The inventory, prices and the capital expenditures are controlled and directed by the Montreal head office, so that Galbraith has no authority in that area.

6. The evidence indicates that Galbraith does not participate in the formulation, determination or effectuation of the respondent's policies. Furthermore, he is not called upon to make decisions involving the exercise of independent judgment and discretion with respect to the business of the respondent. Indeed, the evidence establishes that he is basically a resident salesman with minor additional duties with respect to the care of the proceeds of the sale and the housekeeping of the premises of the respondent in Prescott.

7. The Board therefore finds that Galbraith does not exercise managerial functions and is not engaged in a confidential capacity in matters relating to labour relations and that he is an employee of the respondent within the meaning of the Act.

8. The evidence is that the Smith's Falls operation of the respondent is looked upon as a parent of the Prescott branch. Although there is minimal managerial authority in Smith's Falls insofar as the operation of the Prescott store is concerned, it was, nevertheless, stated that the supply of replacement help in the event of Galbraith's absence and the settling of any current housekeeping problems are dealt with by the Smith's Falls office of the respondent. The latter in turn is responsive to the main governing authorities at the Montreal head office of the respondent. There is, thus, a direct and continuing link between the sub-store at Prescott and the parent store at Smith's Falls.

9. Galbraith, as already noted, is the sole employee of the respondent at the Prescott sub-store. He has indicated his desire to be represented by the applicant union. In Wittich's Bread Limited case, OLRB Monthly Report, January 1969, p. 1019, the Board pointed out that it is a well-established practice of the Board that where a single employee is in a different geographic area than other employees in the bargaining unit, the Board will include that single employee in the bargaining unit if that employee would be deprived of the right to be represented by the trade union, since bargaining units must comprise more than one member (Amplitrol Electronics Limited case, OLRB Monthly Report, April 1968, p. 29). The circumstances in the present case are similar to those outlined in the Wittich's Bread Limited and Amplitrol Electronics Limited cases (*supra*).

10. The Board finds that all employees of the



respondent at Smith's Falls, save and except store manager and persons above the rank of store manager, constitute a unit of employees of the respondent appropriate for collective bargaining.

11. For the purposes of clarity, and having regard to the principles and findings set out in paragraph 9 above, the Board declares that C. Galbraith is an employee of the respondent in the bargaining unit described above.

12. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on February 4, 1975, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

13. A certificate will issue to the applicant.

7425-74-U: Canadian Elevator Manufacturers, a Division of the Canadian Electrical Manufacturers Association (Applicant) v. INTERNATIONAL UNION OF ELEVATOR CONSTRUCTORS LOCAL 90, AND THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (Respondents).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members J.D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: R.J. Drmaj and R.D. Suddard for the applicant; S. Simpson and F.W. Love for the respondent union, and V.P. Parkin, respondent employee.

DECISION OF THE BOARD: April 16, 1975.

1. This is an application under Section 123 of the Labour Relations Act.

2. Section 123 empowers the Board to act in the context of an unlawful strike, lock-out or the threat thereof; but it pertains only to the construction industry. Accordingly, an applicant must bring itself and its employees within the definitions found in section 106.

3. Having regard to all of the evidence, the Board is

satisfied that at least part of the businesses of the employers constituting the applicant employer organization do operate within the construction industry. (See Arcan Eastern Limited [1969] OLRB M.R., April, 141 and see Article VII of the collective agreement between the applicant and the respondent trade union.) As for the individual respondents, the Board is satisfied that Raymond Butters, Gerald Rau, James Stephenson, Dale McIntyre, James Sandforth and Wayne Clough are employees of the respondent who were employed in the construction industry on the material days. The evidence does not establish that any of the other individuals whose names appear on Schedule "A" were so engaged. Accordingly, the application as against Barry McNeill, Reginald Kee, Douglas Gibbs, Basil Saulnier, Robert Perro, James Johnston, Vernon Parkin, Richard Thomas and Trevor Pond is dismissed.

4. Because of the collective agreement between the applicant, Canadian Elevator Manufacturers (comprising of Dover Corporation (Canada) Limited, Montgomery Elevator Co. Limited, Otis Elevator Company Limited and Westinghouse Canada Limited - hereinafter referred to as "the employer") and the International Union of Elevator Constructors (representing the respondent trade union as well as Locals 50 and 96), the Board is satisfied that the applicant has a sufficient interest to bring the application.

5. Some background is necessary before the applicant's allegations and the respondent trade union's reply can be properly understood. The evidence establishes that the employers are engaged in the manufacture, construction, repair, maintenance and service of elevators and the respondent trade union represents employees in the elevator industry. It is clear that this application pertains only to those employees employed by the constituent employers of the applicant in the construction divisions of their businesses. As noted above, there was insufficient evidence to bring those employees engaged in repair, maintenance and service within the construction industry provisions of the Act (in contrast to IMI Underground Contractors [1969] OLRB M.R. 506) and, of course, those employees engaged in the manufacturer of elevators are by definition excluded.

6. The application in question arises out of employment practices in the industry and, therefore, the background can be restricted to this aspect of the industry. The collective agreement preceding the now current collective agreement between the applicant and respondent trade union obligated the employers

to terminate the employment of any employee who failed to obtain or maintain membership in the respondent union and obligated all mechanics and helpers, as a condition of employment, to obtain and maintain membership in the respondent union. The collective agreement was effective from May 1, 1967 to April 30, 1972. The union security provision is found in Article III of that agreement and reads:

### "ARTICLE III

#### MEMBERSHIP REQUIREMENTS

Par. 1. All Mechanics and Helpers covered by this Agreement shall, as a condition of employment, obtain and maintain membership in a Local Union of the International Union of Elevator Constructors on and after the thirtieth (30th) day following the beginning of their employment or the date this Article becomes effective, whichever is later.

Par. 2. The Manufacturers shall be obligated under this Article, after it becomes effective as above provided, to terminate the employment of any employee who fails to obtain or maintain membership in a Local Union as required by this Article, upon receipt of a written request for such termination from his Local Union."

7. However, it was established in evidence that this agreement failed to detail all of the employment practices followed by the parties - practices at least followed until September 1, 1974. Witnesses on behalf of the applicant and the respondent trade union acknowledged that, at least prior to this date, their relationship was subject to a hiring hall procedure and this procedure was qualified by what is known as a "permit" system. Article III of the former collective agreement indirectly required an employer to make a request to a local union office when it required an employee. If there was a union member available (hereinafter referred to as "card holder"), he would be sent; if not, the union would attempt to supply persons from amongst non-members who had previous experience. These latter persons were designated as "permit holders" in that the local union would issue permits to them to authorize their employment with the employer, despite their non-union



membership status (otherwise a status that would be contrary to Article III). If the union was unable to supply either members or former permit holders, the employer was free to go to other sources, so long as the person selected was referred to the union to obtain a permit before reporting to the job. The evidence establishes that a permit was issued to a person for a specified period of time, usually one month, and that it had to be renewed for each succeeding period. Furthermore, the issuance of a permit required the payment of a specified amount of money by the person thereby authorized to work. During the first six months of employment a permit holder paid \$12.00 per month (a period during which he was designated as a probationary helper under the collective agreement - see Article X Par. 3), and thereafter he paid \$14.00 per month. This money was conveyed directly by the permit holder to the local union by cheque or money order. A typical permit has the following format:

"PERMIT CARD AND RECEIPT NO. \_\_\_\_\_

LOCAL 90, I.U.E.C.

Name \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_

Company Employed By \_\_\_\_\_

Amount Paid \_\_\_\_\_ Cash  
Cheque  
By M.O. \_\_\_\_\_

Period Covered \_\_\_\_\_

Signed by \_\_\_\_\_  
Business Representative, Local 90  
I.U.E.C. "

8. The former collective agreement not only said nothing about the existence of permits; it said nothing about the customary nature of permits. That is to say, permits had more significance than just permitting non-union people to perform work that fell within Article II and Article IV of the former collective agreement. The former collective agreement (save Article V Par. (1a) stipulating that probationary helpers were to be laid off

first) did not contain a seniority system; but the permit system was a surrogate in this regard in that the evidence establishes that card holders, when laid off, were permitted to displace or "bump" employed permit holders on an industry-wide basis.

9. We have used the past tense and the past collective agreement in describing this employment practice because the employers have taken the position that the current agreement has eliminated the permit system. It is common knowledge that, because of a bitter and costly industry shutdown arising out of the 1972 negotiations between these parties and others, the Government of Ontario enacted the Elevator Contractor Unions Disputes Act, 1973, S.O.C.I. requiring the International Union of Elevator Contractors, its Ontario Locals (including the respondent trade union) and five elevator companies to submit their differences to final and binding arbitration. Thus the current collective agreement is prefaced by the following paragraph:

"The document contained here is the Collective Agreement prepared pursuant to Subsection (7) of Section 4 of The Elevator Contractor Unions Disputes Act, 1973, and gives effect to the decision of the Board dated February 28, 1974.

On Behalf of the Board:

Judge J. C. Anderson (Chairman)"

10. In contending that this agreement has eliminated the above-described system, the applicant relies upon the following provisions of the Agreement:

### "ARTICLE III

#### Membership Requirements

Par. 1. An Elevator Contractor Mechanic or an Elevator or an Elevator Contractor Helper covered by this Agreement shall, as a condition of employment, obtain and maintain membership in a Local Union of the I.U.E.C. on and after the thirtieth (30th) day following the beginning of his employ-

ment or the date this Article becomes effective, whichever is later.

Par. 2. The Employers shall be obligated under this Article, after it becomes effective as above provided, to terminate the employment of any employee who fails to obtain or maintain membership in a Local Union as required by this Article, upon receipt of a written request for such termination from his Local Union; except that the Employers shall have the right to refuse such request if they have reasonable grounds for believing (1) that such membership is not available to the employee on the same terms and conditions generally applicable to other members, or (2) that membership has been denied or terminated for reasons other than the failure of the employee to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership." [emphasis added]

#### "ARTICLE X (A)

##### Employment, Layoff and Recall

Par. 1. A Joint Employment Committee comprised of an equal number of employer representatives from the industry and from the Local Union shall be appointed in each locality.

Par. 2. The primary purpose of the Committee shall be to establish and keep current an open list of individuals who are fully qualified to perform the work required in the industry, or who are being trained in the work of the industry, or who have apparent potential for such training. This open list shall be established and kept current on a non-discriminatory basis and without regard for membership in the Union. The Joint Employment Committee (co-ordinating its work with the Education Committee, the Joint Examining Committee and with



government and outside educational agencies as it deems advisable), shall develop policies and procedures designed to attract and retain a competent and stable workforce in the industry.

Par. 3. An Employer shall use the Local Union as a first source of job applicants. In the event that the Local Union is unable to satisfy satisfactorily the Employer's request within forty-eight (48) hours, the Employer may obtain applicants from any other available source. The Employer has the right to reject any applicant referred to him by the Local Union, however, a claim that the Employer has unreasonably rejected such an applicant may be the proper subject matter of a grievance.

Par. 4. The Employer may lay off or discharge a Probationary Helper at any time during the probationary period and no such lay off or discharge shall be the proper subject matter of a grievance.

Par. 5. Seniority of an employee is his total length of service in the industry in Ontario and shall be recorded in the open list provided for in Par. 2 above. Seniority shall not accumulate during a layoff and Seniority shall be deemed to be broken if the employee does not have three (3) months service within the preceding twelve (12) months.

Par. 6. In the event that lack of work requires a reduction in the workforce, employees shall be laid off in the following order:

- (a) Probationary Helper.
- (b) Helper having less than two (2) years seniority within the preceding three (3) years, and without regard to seniority,

(c) Helper having two (2) years or more of seniority within the preceding three (3) years,

(d) Mechanic.

Par. 7.

(a) Provided the necessary skill and ability to do the work exists, the Helper having the lesser or least seniority shall be the first to be laid off in applying Par. 6(d) above. Provided the necessary skill and ability to do the work exists, the Mechanic having the lesser and least seniority shall be the first to be laid off in applying Par. 6(d) above.

(b) A Helper working at an overtime job site may not be bumped by an employee from a different job site for the purpose only of working overtime.

Par. 8. The recall of employees shall be in the reverse order of the lay offs made in accordance with the provisions of this Article.

Par. 9. It is recognized that it will take some time for the parties to establish a Joint Employment Committee in each locality and for the Committee to develop the necessary practices and procedures. Therefore, the provisions of this Article shall become effective as of September 1st, 1974, or an earlier date if the parties agree. In the meantime, existing practices shall continue in effect.

Par. 10. In the event that the Joint Employment Committee is unable to develop workable practices and procedures, the matter shall be referred to the Joint Industry Committee which shall have the authority to amend, modify or make substitutions for the provisions of this Article and to establish the

practices and procedures which will apply, provided, however, that the principles of seniority set forth in this Article are retained. If the Joint Industry Committee fails to resolve the matter and arbitration is required, the Impartial Arbitrator shall have the same authority as the Joint Industry Committee.

11. The applicant submits that the emphasized portion of the new Article III, as of September 1, 1974, allows the employers to retain the person designated as permit holders because it is alleged that they are being denied membership in the trade union for reasons other than the failure to tender initiation fees. The date of September 1, 1974, comes from new Article X(A). Article X(A) appears to introduce an explicit seniority system into the elevator industry in conjunction with a stipulation that a Joint Employment Committee be established in each locality to draft and keep current an open list of individuals described in Par. 2 and to develop policies and procedures designed to attract and retain a competent and stable work force. Presumably the authors of Article X(A) believed that it would take some time to establish the Committees and thus Par. 9 delays the implementation of Article X(A) until September 1, 1974. Par. 9 goes on to provide that "[i]n the meantime [between February 28, 1974 and September 1, 1974] existing practices shall continue in effect [presumably the permit practices]. While given no explanation, the Board was informed that the Committee has not been set up under Article X(A) by September 1, 1974, and the employers appear to have taken the position that, whatever the progress under Article X(A) by September 1, 1974, the existing practices came to an end.

12. On the other hand, the trade union avoided any interpretation of Articles III and X(A) and took a much more simple position. It submitted that neither the preceding collective agreement nor the current collective agreement mention the permit practices in the industry. Therefore it reasoned that if the practices were operative under the preceding collective agreement (a fact that was not challenged by the applicant) there is no basis to any argument that they have ceased to operate under the current agreement. In other words the respondent submitted that express language would be required in the current agreement to achieve the applicant's contentions.

13. The following evidence indicates that this matter



arises under Section 123 because each party is now acting on its interpretation of the status of permit practices in the industry.

13. It was established that during the month of February the respondent trade union through its agent and business representative, Mr. Frank W. Love, informed current permit holders employed by the applicant's constituent employers that their monthly permit would not be renewed beyond the end of February. These people were informed either when attending the respondent trade union's offices and meetings or they were sent a letter by Frank Love. The letters were worded in the following manner:

"While we currently have Card Helpers available for work, Local 90 I.U.E.C. will be unable to renew your Monthly Permit.

This situation could change, however, in which case, you could phone this office in that regard.

Yours truly,

Frank W. Love  
Business Representative."

(The term "Card Helper" refers to a union member performing the job function of a helper.) It was further established that in February the employers were aware that the permit holders in their employ would not have their permits renewed for the month of March and, as well, they knew that qualified card holders would be available to replace (bump) the permit holders in the month of March. Apparently because of the slow-down in the economy in general, and the construction elevator industry in particular, union members were being laid off in the industry and, at least according to the employment practices preceding the current collective agreement, they had a right to bump permit holders (although in this case the trade union was attempting to implement the practice by dovetailing the expiration of the permits with the hiring of union members). Therefore during the month of February, union members who were on lay-off attended at the offices of Dover Corporation (Canada) Limited, Montgomery Elevator Co. Limited and Otis Elevator Company Limited and requested employment. In each case, while their qualifications were not questioned, their requests were refused because the employers claimed to have a full complement of

workers. However, they were permitted to fill out an application for employment.

14. On Thursday, February 27, 1975 the respondent trade union held a meeting in London, Ontario. This meeting was attended by a few permit holders (for example, Gerald Rau) and a large number of union members. Before this Board Mr. Love admitted advising those in attendance that no permits would be issued in the month of March and that any union member caught working with a man without a permit would be brought up charges under the Local's by-laws. It is also of note that, for some unexplained reason, Gerald Rau had been issued a permit for the month of March (to Mr. Love's surprise) but he volunteered to give it back and did so then and there at the London meeting.

15. The first working day in the month of March was Monday, March 3rd, 1975. Mr. John McIntyre, Superintendent for Dover Corporation in the London District told the Board that James Sandforth (a former permit holder) reported to the employer's London office instead of reporting for work at a construction site in Windsor. McIntyre instructed him to leave for Windsor immediately. He then called McIntyre from Windsor at about 9:00 a.m. and told him that the men on the job refused to work with him because he did not have a permit. Sandforth later told McIntyre that he was told to get off the job by a Harry MacDonald (said to be an employee of Otis) or he would have trouble becoming a member of the union at a later date. MacDonald was not called as a witness and his status in the trade union was not established.

16. John McIntyre further testified that Dale McIntyre (a former permit holder) who had been working on a construction site in London was sent back to the office by Don McIntyre and And McGill, two card holders who have worked over twenty years for Dover Corporation. Both of these men told John McIntyre that they could not work with a permit man who did not have a permit because they had been told if they did they would be put on charges. Work is available for Dale McIntyre and James Sandforth, but they have not reported to work since March 3, 1975.

17. On March 4, 1975 John McIntyre received the following telegram from Frank Love:

"Without prejudice regarding your telegram of  
March third Local 90 I.U.E.C. men employed  
by your company have not repeat have not caused

unlawful work stoppage to our knowledge if you require manpower kindly advise this office as per provincial agreements. Frank W. Love  
Business Representative Local 90 I.U.E.C."

18. Mr. Hugh Richards, Branch Manager of Montgomery Elevator Co. Limited in Hamilton testified that Wayne Clough (a former permit holder) refused to report to work on a construction site in Kitchener; that the work remains available; and that Clough continues not to work. Mr. Richards further testified that on March 4, 1975 Mr. Mat Stevens, said to be the President of Local 90, told him that Wayne Clough's permit had been removed. On or about the same date Frank Love is reported to have told Richards the same thing.

19. Mr. Gord McArthur, Construction Superintendent for Otis Elevator in the Hamilton area, testified he spoke with Raymond Butters (a former permit holder) on March 4, 1975 and Butters advised him that his permit had been "lifted" by the union. Work was available for Butters but he refused to report and has not contacted the Otis Company since. McArthur further testified that on March 3rd Mat Stevens asked that Robert Perro (another former permit holder in the employ of Otis but not apparently in the construction industry) be replaced by Garry Pierson; however McArthur refused to employ Pierson at that time.

20. Leonard Diroff, a superintendent for the Dover Corporation, testified that James Stephenson (a former permit holder) called him on Friday, February 28, 1975 and told him that the union had returned his cheque and that no permits would be issued for the time being. However, it was not established that work is or remains available for Stephenson to perform. Accordingly, the application as against him is dismissed.

21. James Guthrie, a Superintendent for Otis Elevator in the London district testified that Gerald Rau (a former permit holder in the employ of Otis) told him on Friday, February 28th that his permit had been withdrawn and that he would not be able to perform work scheduled at a construction site in Hanover. Mr. Guthrie further testified that Gord Bannister, a union member, told him he could not work with Rau in that he would be subject to a fine. Accordingly, Rau refused to work and Bannister who rescheduled to another job.

22. The last sequence of events is an exchange of telegrams between the applicant and the respondent trade union. The first telegram sent to Frank Love by a representative of the applicant reads:



"THE ELEVATOR DIVISION OF C.E.M.A. ON BEHALF OF DOVER CORP. CAN. LTD., THURNBULL ELEVATOR DIVISION, MONTGOMERY ELEVATOR CO LTD, OTIS ELEVATOR CO. LTD. GRIEVES AGAINST LOCAL UNION 90 ITS OFFICERS AND REPRESENTATIVES FOR BREACHING THE COLLECTIVE AGREEMENT BETWEEN THE NAMED PARTIES THROUGH THE ACTIONS OF LOCAL 90 IN WITHHOLDING WORKING PERMITS FROM CERTAIN EMPLOYEES OF THE NAMED COMPANIES THEREBY PROHIBITING SUCH EMPLOYEES FROM PERFORMING THEIR REGULARLY ASSIGNED DUTIES ON MARCH 3-4-5 AND CONTINUING. THE ELEVATOR DIVISION OF C.E.M.A. ON BEHALF OF THE NAMED COMPANIES CLAIM SUCH ACTS TO BE IN CONTRAVENTION OF PARAGRAPHS 2 and 3 OF ARTICLE 2 ARTICLE 10A AND ARTICLE 13 OF THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES DATED FEB 28 1974 AND CLAIM DAMAGES AND REIMBURSEMENT FOR ALL LOSSES AND EXPENSES SUSTAINED AS A RESULT OF THESE ACTIONS. RUBERT D. SUDDARD NATIONAL LABOUR COMMITTEE C.E.M.A. ELEVATOR DIVISION"

Mr. Love's evidence is that he replied as follows:

"ATTENTION: ROBERT D. SUDDARD

RE: YOUR TELEGRAM - MARCH 6, 1975 - DELIVERED 11:23 A.M. THERE HAS, IN OUR OPINION, BEEN NO VIOLATION OF THE AGREEMENT, AND THE GRIEVANCE IS HEREBY DENIED.  
FRANK W. LOVE, LOCAL 90 - BUS. REPRESENTATIVE"

23. Section 123(1) of the Labour Relations Act reads in part:

"123. - (1) Where on the complaint of an interested persons, trade union, council of trade unions or employers' organization the Board is satisfied that a trade union or council of trade unions called or authorized or threatened to call or authorize an unlawful strike or that an officer, official or agent to a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike, or that employees engaged in or threatened to engage in an unlawful strike, it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike."

A strike is defined in section 1(1)(m) of the Act as including:

"... a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down, or other concerted activity on the part of employees designed to restrict or limit output;"

The meaning of an unlawful strike within the context of the legislation can be deduced from section 63 which reads, in part:

"63. - (1) Where a collective agreement is in operation, no employee bound by the agreement shall strike and no employer bound by the agreement shall lock out such an employee.

(2) Where no collective agreement is in operation, no employee shall strike and no employer shall lock out an employee until the Minister has appointed a conciliation officer or a mediator under this Act and,

(a) seven days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator; or

(b) fourteen days have elapsed after the Minister has released to the parties a notice that he does not consider it advisable to appoint a conciliation board,

as the case may be.

24. Having regard to the reasoning of the Board found in Dover Corporation (Canada) Limited [1972] OLRB M.R. May 435, it is now clear that section 123 envisages either an employer or an employers' organization (inter alia) as an applicant. To read the section in any other way would ignore the purpose of the section and the Board's statutory obligation to encourage industrial peace in the construction industry. The term "interested person" does not appear in any other section of the Act and is not reproduced in that portion of

section 123 outlining those against whom relief can be issued. In fact, it is replaced with the words "a person, employee, employer, employers' organization" and we would therefore find that these words are parallel in meaning. This interpretation is buttressed when one has regard to the Interpretation Act, R.S.O. 1970 c. 225 s.30(28) wherein it is established that the word "person" can refer to a corporation. If this is true, it is equally true that the phrase "interested person" can refer to a corporation and an organization of corporations, be they employers or simply affected parties. On the other hand, it is clear that the word "person" does not include a trade union and therefore the legislative draftsman of section 123 had to be very specific in that regard. (See Rapid Type Setting Co. Ltd. [1962] OLRB M.R. July 138).

25. This preliminary point established it is necessary to assess whether those joined as respondents have contravened or are contravening section 123. But before doing this we must note that the applicant is clearly not entitled to the relief requested in paragraphs 6(a) and 6(c) of its application. In regard to paragraph 6(a) the applicant has no statutory right to this request under section 60 and it has no contractual right to this relief under the collective agreement. In regard to paragraph 6(c) the applicant did not make the card holders respondents in this application.

26. In asking whether there has been a contravention of section 123 we are asking whether the trade union has called or authorized an unlawful strike and whether the so-called permit men are engaged in an unlawful strike. At the beginning of March 1975 the employers requested the permit holders to continue working at their jobs and requested that their fellow workers and card holders work with them. (Of course permits have not been issued and we are using the term permit holder merely to designate the former permit holders.) The evidence establishes, either directly or circumstantially, that the trade union told the permit holders they were no longer entitled to work and told the card holders not to work with anyone who did not have a permit. The evidence further establishes that the permit holders have refused to work as requested and the union members have made it clear that they will not work with the permit holders.

27. With these facts established we are constrained to find that the trade union has called or authorized an unlawful strike and that the permit holders are engaged in an unlawful strike, albeit in many cases quite reluctantly.



28. The actions of the card holders in refusing to work with the individual respondents constitute an unlawful strike within the meaning of the Act. The actions amount to a "slow-down or other concerted activity on the part of employees designated to restrict or limit output" as well as constituting an outright refusal to perform work if accompanied by a former permit holder. The fact that these union members believe they will be put on charges makes no difference in these particular circumstances. (We would note the Board has refused to accept a similar defense in the context of an application for a strike declaration. See Hefferman Floor & Wall Products Ltd. [1965] OLRB. Rep. July 275 and Alps Constructions [1964] OLRB Rep. June 131.)

29. Based upon the evidence outlined above the Board is satisfied that Mr. Frank W. Love called or authorized this unlawful strike and because of section 88(2) of the Act we must find that the respondent trade union called or authorized this unlawful strike.

30. This brings us to the actions of the permit holders who are subject to the application. First it was argued that the permit holders may not be subject to the collective agreement (and therefore not subject to Article XIII - the no-strike clause) and secondly it was suggested that the permit holders are not engaging in concerted activity within the meaning of section 1(1)(m). In other words, on this latter point, it was suggested that each permit holder has reacted individually to the withdrawal of his permit by a union to which he does not belong and to whose constitution he does not subscribe (unlike the card holders). In fact, many of the permit holders tried to work but only to have union members refuse to work with them.

31. We would first note that while it would appear that permit men are covered by the agreement when they are working for the employers nothing turns on this observation in that even when a collective agreement is not in operation an employee is unable to strike until section 63(2) is complied with (see Wheelabrator Corporation of Canada Ltd. (supra). And of course in the circumstances confronting this panel the conditions in section 63(2) have not been complied with. This means that if the permit men have engaged and are engaged in a strike, we must conclude that the strike is unlawful.

32. Section 1(1)(m) defines a strike as including "a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding ..." Therefore, a person acting

alone cannot be said to be engaging in an unlawful strike (see Thomas Fuller Construction Company, [1957] OWN 455, 10 DLR (2nd) 670; Pre-Con Company, [1972] OLRB M.R. Sept. 814 at 817). There is no doubt that the permit men have ceased to work or refused to work or to continue to work leaving us with the determination of whether their refusals are in combination, in concert or in accordance with a common understanding.

33. While there may be cases where a group of individuals engage in common but not concerted action (i.e., where employees refuse to cross a picket line because of a reasonable belief by each that he or she will be injured) we do not believe this is one of those situations. The permit men are not members of the respondent trade union but they are a significant part of the manpower in the industry and apparently have been so since 1908. Therefore the permit system that preceded the current collective agreement can be viewed as much like an institution with its own philosophy and values as the respondent trade union is an institution. The permit system is a mode of entry into the trade union and is in the nature of an apprenticeship programme. Accordingly, for the purposes of section 1(1)(m) we see very little difference between those employees who subscribe to the permit system and those who subscribe to the trade union itself. By the membership practices of the respondent trade union, a permit holder can expect membership in the trade union after two years in the industry although one would expect that he must comply with the trade union's directions during this period to gain such entry. Thus the motive for the permit men's actions is apparent - a motive clearly evidenced by the actions of Gerald Rau who voluntarily returned his March work permit to Mr. Love. Therefore we have little choice but to find that the actions of these permit men constitute actions in combination or in concert or in accordance with a common understanding. Moreover, it would be anomalous to find, in these circumstances, that the threat or being placed on charge by the trade union is not a defence open to the card holders, but the possibility of a permit man being refused entry into the trade union is a defence to any claim of concerted activity. The long-standing practice of permit men adhering to the principles of the permit system and then being admitted to membership in the trade union leads us to find that the individuals subject to this application have as much a common understanding as do employees generally who engage in a strike at the direction of their trade union - a strike that may cause them inconvenience, economic loss and possibly economic disaster. Thus in these circumstances it cannot be said that such action is other than a refusal to work in accordance with a common understanding.

We therefore find that Gerald Rau, Dale McIntyre, James Sandforth and Wayne Clough engaged in an unlawful strike on March 3, 1975, and are continuing to engage in an unlawful strike. Furthermore we find that because of the actions of Mr. Frank W. Love the respondent trade union called or authorized this unlawful strike.

34. Having arrived at these legal conclusions, the Board wishes the parties to reattend before it. The problems lying at the heart of this application are quite complex and much of this complexity came to the Board's attention only after having adjourned the hearing when it then had an opportunity to review the evidence and relevant documents carefully. While we are satisfied with the above conclusions of law we do wish to have the benefit of further representations of the parties on the nature of the appropriate direction in the circumstances.

35. The Registrar is directed to list this matter for a further hearing as soon as is possible.

7319-74-R: Canadian Union of Public Employees (Applicant) v. THE CORPORATION OF THE TOWNSHIP OF KINGSTON (Respondent).

BEFORE: G.S.P. Ferguson, Q.C., Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

DECISION OF THE BOARD: April 21, 1975.

1. By its decision dated March 6, 1975, the Board ordered the holding of a representation vote of the employees of the respondent in the bargaining unit as outlined in that decision.

2. The applicant union has requested the Board to reconsider its decision and the Board has carefully considered the written representations made by the applicant and the respondent in respect to the request for consideration.

3. The membership position of the applicant union was determined by the Board on the basis of including in the bargaining unit the list of employees who were included on Schedule "B". This schedule was filed by the respondent at the commencement of the hearing by the Board on March 3, 1975. It is alleged by the applicant in requesting reconsideration



that the Board has not complied with its normal policy of excluding the part-time employees when the request for exclusion has been made by either of the parties and when there is a history of the respondent having hired this category of employee.

4. In this case the full-time bargaining unit was made up of 38 individuals but at the commencement of the hearing on March 3, 1975, the applicant union was advised that there were 25 additional employees listed on Schedule "B" as filed by the respondent at the hearing. The bargaining unit originally proposed by the applicant included both full-time and part-time employees. The Board was not aware of their being part-time employees until Schedule "B" was filed by the respondent at the hearing.

5. It has been the practice of the Board to not entertain requests for alteration in a bargaining unit after disclosure of the number of persons on the schedules and the membership position of the applicant. In this particular application, the representative of the applicant made no representations for exclusion of the part-time personnel until after the disclosures referred to above had been made at the hearing. Under these circumstances, the Board was unable to comply with the request of the applicant for the exclusion of the part-time personnel from the bargaining unit. The procedure adopted by the Board was not at variance with the well-established practice of the Board.

6. The request for reconsideration is denied, and the Registrar is instructed to proceed with the holding of the representation vote as originally ordered by the Board.

7414-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. ADVENTURE CONSTRUCTION LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: H. A. Herron for the applicant; no one appearing for the respondent; B. N. Howe for the objectors.

DECISION OF THE BOARD: April 22, 1975.

1. This is an application for reconsideration of a Board decision dated April 1, 1975, certifying the applicant trade union for an all employee unit engaged by the respondent in the operations of cranes, shovels, bulldozers and other similar equipment.

2. The applicant filed the application for certification on March 5, 1975, and a terminal date for receiving additional evidence of representation was set for March 13, 1975. By decision of the Board dated March 18, 1975, the terminal date was extended to March 25, 1975. On that day a statement of desire indicating opposition to representation by the applicant trade union was filed. The Board in determining the count found that the petition, even if given credence, would not affect the applicant's entitlement to a certificate without the requirement of directing a representation vote. The Board therefore proceeded to issue a certificate granting the applicant bargaining rights for the appropriate unit.

3. On April 4, 1975, the solicitors for the group of objectors wrote the Registrar requesting reconsideration of the Board's certificate for reasons that can be readily discerned from the letter;

"I wish to acknowledge receipt of your letter of April 1st, 1975 and to advise that I have discussed this matter with our client Rheel Caouette again.

Mr. Caouette indicated that at the time he had the Petition signed, he had an extra copy of it and on one copy he obtained four signatures and on the other one he only obtained three signatures. Evidently he delivered to us a copy with the three signatures which we forwarded on to you, and a copy with the four signatures which we neglected to forward to you. We now enclose the original Petition with the 4 names.

I can advise that Mr. Caouette attended here just at closing time and there was a great rush to get the Petition in the mail and it appears that Mr. Caouette did in fact bring in the copy with the four signatures but we missed it.

This being the case, I would like to ask the Board for a privilege to a hearing in connection with this application."

(emphasis added)

Attached to counsel's letter was a statement of desire dated March 24, 1975, that purportedly was intended to be filed at the appropriate time.

4. The Board complied with counsel's request for a hearing in order to entertain his representations with respect to disposition of its request for reconsideration. At the hearing counsel repeated the circumstances giving rise to the filling of the wrong document indicating employer opposition to representation by the applicant. It was argued that the employees should not be deprived of their otherwise legitimate rights to a representation vote because of the innocent mistake committed in failing to file the correct document containing the names of a sufficient number of employees to cast doubt on the applicant's membership cards. Furthermore it was argued that failure by the Board to accede to the request of the group of objectors to reopen the case in order to extend the terminal date for entertaining the statement of desire would be a denial of natural justice in that a party was not conferred a reasonable opportunity to present its case. (See; Re Domtar Ltd. and United Paperworkers Union [1974] 1 O.R. (2d) 45 (Div. Ct.) per Donnelly J. at p. 51).

5. After the representations were submitted the Board adjourned to consider the issues raised by the parties. The Board orally determined at that time for reasons to be given in writing at a later date that the statement of desire filed by the objectors in support of its letter requesting reconsideration of our certificate was untimely and that the application for reconsideration be denied.

6. The issue before the Board is whether the group of objectors should be prejudiced by the innocent mistake committed by counsel in failing to file with the Board the correct document evidencing employee opposition to the applicant trade union. The Board does not propose to repeat the many cases resolved in the past indicating our requirements for strict compliance to the mandatory provisions of S48(1) of The Board's Rules of Practice and Procedure in connection with the filing of evidence of representation in support of or in opposition to an application for certification. (See for example; The J. H. McNairn Ltd. Case OLRB M.R. February 1973, p.90). The mischief envisaged by the Board in requiring strict compliance with the terminal date (and its correlative posture in refusing to extend the terminal date in order to entertain untimely evidence of membership) was elaborated in The Canadian Stebbins Engineering & Manufacturing Co. Ltd. Case OLRB M.R. July 1965 p.280 where an employee of the respondent in that case handed a petition to an employee of the Department of Labour (not of The Labour Relations Board) and requested that



employee to deliver the petition to the Board. The Department of Labour employee filed the petition with the Board subsequent to the terminal date and the Board in that case stated as follows:

"In our view, the information and instructions contained in the form in question are clear in every respect. There is nothing in the form which would in any way suggest to an employee that he adopt the course of action taken by Mr. Broome. We are not prepared, therefore, to regard his actions in any different light than if, say, he had asked a lawyer coming to Toronto to deliver the document to the Board and the lawyer failed to do so. Having regard to the clear instructions on the form, the Board would not accept a request to review the late filing of a document in those circumstances. Similarly, in the present case, we must reject such a request. Although aware of Form 57 (now 52) Mr. Broome, for reasons best known to himself, voluntarily decided to proceed in a way not envisaged or suggested by Form 57 (52). He cannot now be heard to complain that his actions, even though undertaken in good faith, did not bring about the result that he had hoped for."

(emphasis added)

7. The Board has exercised its discretion pursuant to section 57(2) of The Rules on Practice and Procedure to extend the terminal date to permit a party to submit otherwise untimely evidence of representation. Indeed that discretion was exercised in this very application in favour of extending the group of objectors an opportunity to file a petition. The vast majority of occasions where this discretion is exercised is in instances where a party because of interference in dispatching formal notice of an application (for example; short notice attributed to delays in the delivery of the mail) would be adversely affected with respect to an insufficiency of time to make representations before the Board. In this respect it would be an unfair deprivation of a party's access to the full processes of the Board to refuse to extend the terminal date where failure to comply with the original date may be attributable to circumstances beyond the control of the party prejudiced. (See for example; The Adena Investments Ltd. Case OLRB M.R. January 1971 1.)

8. In the circumstances of this case where the untimely petition is attributed to counsel's mistake the Board quite clearly has adopted the position that the client must assume the responsibility for that mistake. Thus in The Addressograph-Multigraph of Canada Limited Case OLRB M.R. March 1968, 1183, an untimely petition was attributed to the mistake of counsel's secretary in failing to mail the petition by registered mail. Instead the document was mailed in the ordinary course and was deemed untimely by the Board even though the document if registered would have arrived at the Board no later than the ordinary mails. In that decision the Board ruled at p. 1187;

While counsel for the intervener argued that his client should not be saddled with this mistake or the mistake of his employee, the Board is of the opinion that a client must assume responsibility for the mistake of his solicitor. It cannot seriously be argued that legal counsel can make mistakes with impunity or that their mistakes do not carry the same weight as similar mistakes made personally by a party. We are of the view that counsel's responsibilities are no less onerous than the responsibilities imposed upon a party in any proceeding and a party cannot evade the results of mistakes made by counsel retained by the party.

9. The principle cited in The Addressograph-Multigraph Case (supra) was applied in The Soo Dairies Limited Case OLRB M.R. April 1968 115, where a petition was not entertained by the Board because counsel retained in the matter wrongly assumed a second notice (the first being The Notice to Employees [Form 5]) would be sent him in connection with the Board hearing of the application for certification. As a result of this mistaken assumption counsel failed to attend the hearing on his client's behalf and the Board proceeded in his absence and ultimately issued a certificate granting bargaining rights. The Board in dealing with the application by counsel for reconsideration held that "a client must assume the responsibility for the mistake of his solicitor" and denied the request to reopen the case. (The result was upheld on application for judicial review in Re Soo Dairies Ltd. Case by ruling of the High Court in its unreported decision (Per Morand J.) dated April 2, 1969.

10. In a like manner, the Board resolved in the circumstances

presented to us to deny counsel for the group of objectors leave to reopen the case for purposes of extending the terminal date in order to treat as timely the document that was not properly submitted to the Board. The Board has an overriding concern especially in instances pertaining to applications for certification under the construction industry provisions of the Act to expedite in a meaningful fashion representative applications. Delays in the processing of such applications even where occasioned by innocent mistakes may very well contribute to defeating the very purpose created by The Labour Relations Act. (See for example; Re Hotel and Restaurant Employees Union v Nick Masney Hotels 70 CLLC ¶14,020 (CA) per Laskin J.A. at p. 101). We are not unmindful of our responsibilities in extending every opportunity to a party to present his point of view in proceedings before the Board. In the instant case, the Board is satisfied that such an opportunity has been extended in accordance with the objectives of The Labour Relations Act and in accordance to the Board's Rules on Practice and Procedure.

11. The Board therefore reaffirms its decision given orally at the hearing in connection with this matter and denies the application for reconsideration filed on behalf of the group of objecting employees.

6370-74-R: Health Sciences Association of the Regional Municipality of Niagara Falls (Applicant) v. NIAGARA REGIONAL HEALTH UNIT (Respondent) v. Canadian Union of Public Employees (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members E. Boyer and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: M. Gordon for the applicant; J. Finley and J. Yeo for the respondent; W. A. Acton, R. Chisholm and H. Browne for the intervener.

DECISION OF THE BOARD: April 25, 1975.

1. This is an application for certification for a bargaining unit of physiotherapists and occupational therapists employed by the respondent in its home care plan for not more than twenty-four hours per week.

2. Both the respondent and the intervener objected to the applicant's proposed unit submitting that the appropriate unit should parallel the all employee unit found appropriate by this



Board with respect to the full time employees. It is argued that the appropriate part time unit should be unrestricted by specific programmes or particular job functions. In support of this submission a collective agreement between the respondent and the intervener was filed in evidence containing a scope clause defined in all employee terms that particularly provided for a wage rate for physiotherapists. There was also filed in evidence a collective agreement negotiated by voluntary recognition between the respondent and the Nurses' Association covering full and part-time nurses in the respondent's employ.

3. The applicant argued that the unit proposed by it was appropriate for two reasons. Firstly, it was submitted that physio and occupational therapists because of their training and educational background require no supervision with respect to the application of their skills to patient care and therefore do not share a community of interests with other employees engaged in the home care plan. In short, the submission of the applicant is predicated on the assumption that the professionalism exhibited by these therapists in performing their duties and responsibilities justified them being treated separately and apart from employees whose functions although not integral to the home care plan are nonetheless supportive of the overall objective of the rehabilitation of the patient. Much emphasis was placed on the divergence between the skills, training and professionalism exhibited by the therapist in rehabilitating the patient and the duties of the clerical employees whose functions only peripherally affect the patient. The applicant's argument applied equally to the registered nursing assistants employed in a supportive capacity in carrying out their duties in attending to patients.

4. The applicant also requested that the bargaining unit be restricted to therapists involved in the home care plan. It was argued that employees involved in other programmes administered by the respondent have no functional integration with therapists involved in the respondent's rehabilitation programme. In the absence of the integration of these programmes little community of interest exists amongst employees generally engaged by the respondent in a variety of its pursuits. For example, it was argued that a public health inspector engaged in the respondent's preventive disease programme would have no particular relationship with employees engaged in the rehabilitation of patients. It should be noted however that notwithstanding the applicant's request to restrict the bargaining unit to the home care plan there was no evidence introduced to indicate that other physio and occupational therapists are employed by the respondent in any of its other programmes.

5. The respondent employer is a public health unit generally responsible for the well being of the community it serves. The programmes administered by the respondent are designed towards the continued maintenance of the health of the members of the Niagara Regional District from an occupational, environmental, preventive and rehabilitative perspective. The Medical Officer of Health is answerable to the respondent for the success of the projects funded for these purposes from the public purse. Each programme is supervised by an administrator who is responsible to the medical officer of health for its operation. A separate administrative section manages the business concerns of the respondent's pursuits. For example, the personnel department is under the responsibility of the business administrator who attends to the concerns of employees assigned to these programmes from the date of hiring to the date of severance from the respondent's employ. The interviewing and ultimate hiring of personnel is the responsibility of the administrator of a particular programme and the medical officer of health.

6. The respondent's home care plan is one programme amongst several others designed towards rehabilitation of patients whose problems can be attended to outside of a hospital in their homes. The programme is funded by the Ministry of Health and is administered by the Health Unit. A variety of specialists trained in rehabilitative care are either retained on a contractual basis as the need arises or as employees on a full or part-time schedule. More particularly, we are specifically concerned in this application in resolving the appropriate bargaining unit for employees retained on a part-time basis. The respondent as of the date of the instant application employed on a part-time basis, four physiotherapists and one occupational therapist. Speech therapists, social workers, nurses from the Victoria Order of Nurses, are retained on a contractual basis. Two registered nursing assistants and six office and clerical employees are also hired on a part-time basis in a supportive capacity. Homemakers are retained from the Red Cross Society as the need arises. The administrator responsible for the overall operation of the respondent's home care plan is Mrs. Sweatman, a registered nurse.

7. Organization of the Home Care Plan is a relatively simple procedure as elaborated in The Examiner's Report. Doctors serving the Niagara Region refer patients to the respondent's facilities. Several branch offices are maintained in towns within the area to service members of the community. The doctor prescribes in general the remedial steps required in the treatment of the concerns of his patient. Mrs. Sweatman is then responsible for arranging for the appropriate specialist

to administer to those needs. Members of the office staff are instructed to prepare a record of the patient for filing, to locate available staff required for the patient, to make the necessary appointments for the treatment of the patient and to type the progress reports prepared by the specialist as treatment is administered. The evidence indicates that the office staff are not directly involved in the remedial aspect of patient care. Nevertheless, it was established that the functions performed by the secretarial staff are auxiliary to the co-ordination of the overall effort in causing the rehabilitation programme to work. We are satisfied that the retention of secretarial staff is not necessarily integral to the operation of the plan. Nevertheless the functions performed by them are quite manifestly a necessary adjunct that contributes to its success. In short, the functions performed by the secretarial staff along with the therapist, the nurse, the social worker and the homemaker are part of "the team approach" to patient care adopted by members of the respondent's staff that is necessary for the smooth operation of the plan.

8. The evidence also indicates that underpinning the success of the home care programme is the application of a diversity of skills possessed by the trained personnel retained by the respondent either as employees or on a contract basis. Staff meetings are arranged by Mrs. Sweatman and are attended by the persons involved in the treatment of a particular patient. The doctor who is ultimately responsible for the patient often attends and contributes as well as receives the input of others. The pervasive theme delineated in the evidence was an aura of consultation, consideration and consensus in prescribing the necessary treatment for the patient. Conflict and confrontation appeared the antithesis to sorting out difficulties arising from disagreement with respect to appropriate measures to be taken in dealing with the patient. In this regard no person interviewed questioned the ultimate responsibility of the doctor in determining treatment. Nonetheless the success of the home care plan appears to be premised upon the co-ordination of skills possessed by the numerous resource persons available to the respondent and who would apply their efforts collectively towards the ultimate goal of rehabilitation. In all facets of achieving this end everyone involved in the home care plan integrate their particular skills for the purpose designed by the programme.

9. The Board in measuring the community of interests of employees with a view to determining the appropriate bargaining unit under section 6(1) of the Act addresses itself to numerous objective criteria which through the evolvement of our juris-



prudence have become guidelines for the benefit of parties to our proceedings. Our ultimate concern in weighing these factors in determining the appropriate unit is that collective bargaining be conducted in a meaningful, viable manner. In considering the applicant's representations with respect to confining the unit to part-time physio and occupational therapists engaged in the respondent's home care programme we have concluded that the aims of meaningful, viable bargaining would not be achieved should we accede to those representations. The Board has heretofore mentioned that the employer is bound to a collective agreement covering all employees engaged on a full time basis. The applicant has in effect requested the Board fragment the remaining part-time employees representing a minor percentage of the respondent's overall work force into bargaining units restricted by work assignment and job classification. We view the multiplicity of bargaining units that would ensue by the adoption of the applicant's proposed unit would place the respondent in an intolerable position with respect to dealing with its employees for purposes of collective bargaining. The Board has consistently assumed the posture that sound bargaining will not result where an employer is required to conduct his personnel relations on a multi-unit level. We are of the view that where the concerns of employees with respect to their terms and conditions of employment can be provided for in a wide unit then the Board will encourage bargaining on that basis unless evidence is adduced that demonstrates the contrary. In this particular case the part-time unit should parallel the all employee full-time unit determined appropriate by this Board (albeit on agreement of the parties) in the certification application filed by The Canadian Union of Public Employees. (See; The Niagara Regional Health Unit Case Board File No. 5436-74-R). The viability of this unit encompassing approximately one hundred and twenty full-time employees has been established by virtue of a consummated collective agreement. The Board cannot conclude, especially in light of our aversion to fragmented bargaining units, that the unit proposed by the applicant will likely achieve the purposes contemplated by The Labour Relations Act. (See; The Waterloo County Health Unit Case OLRB M.R. January 1969 1016; The Corporation of the Township of Markham Case OLRB M.R. August 1969 592; The Board of Health of the York-Oshawa District Health Unit OLRB M.R. February 1969, 1178; OLRB M.R. June 1969, 340).

10. In any event, the Board is reluctant to restrict a bargaining unit based on the contingency of the continued success or otherwise of a particular employer pursuit. Should the Board accede to the applicant's proposed unit we would be making the scope and extent of bargaining rights dependent upon conditions that are inherently ephemeral (see for example,

The DeVuono and Gallucci et al case 65 CLLC ¶16,035 at p. 736). In this particular instance bargaining rights would only remain viable commensurate with the continuation of the respondent's home care plan. In the event that programme is substituted, replaced or otherwise terminated employees remaining in the employ of the respondent would be bereft of bargaining rights. Benefits accumulated while bargaining rights existed such as pension benefits or seniority rights could simply lapse. The Board does not hold that collective bargaining rights once established were intended to be nullified by a decision to replace a programme that may very well have outlived its usefulness. Employees are entitled to the continuation of the benefits of representation so long as their functions as employees may usefully be allocated to other employer endeavours. For this reason, the Board concludes that the request to restrict the bargaining unit to the respondent's home care plan is unacceptable. (See; The Board of Education for the Borough of North York OLRB M.R. December 1970, 9157; The McMaster University Case OLRB M.R. February 1973, 102).

11. The applicant particularly emphasized that "the professionalism" of therapists and the attendant implications of the effort exhausted in attaining and preserving their "professional status" be the overriding consideration in measuring the community of interests of physio and occupational therapists as a unit that is per se appropriate. This submission was amended somewhat in context of the recent Report of the Hospital Inquiry Commission (otherwise known as "The Johnston Report") in that the applicant was prepared as a result of the contents therein to represent for collective bargaining purposes allied paramedical employees engaged in patient care. The Board has often stated that the skills and peculiar working conditions of a group of employees is a relevant factor in determining whether those employees share a community of interest with other employees in a proposed bargaining unit. Our overriding concern in weighing this factor along with other criteria is that the parochial interests of these employees be accommodated in the event they are placed in a wider unit. The mere exercise of professional or technical skills standing alone will not necessarily justify their exclusion from an otherwise appropriate bargaining unit. (See; The Essex Health Association Case OLRB M.R. November 1967 916). The implications of the word "professional" from the perspective of The Labour Relations Act has a peculiarly restrictive meaning. The Act recognizes "the professional" in terms of appropriate exclusions from the bargaining unit provided under Section 1(3)(a) and the peculiar status of "professional engineers" as defined under section 1(1)(L) in that an election is conferred professional engineers as to whether they wish to

bargain collectively as one unit or be included for this purpose with other employees in an appropriate unit (See section 6(3) of the Act). In the latter case, no other "profession" is extended this statutory privilege. Furthermore there was no submission that the applicant is entitled or indeed eligible to represent therapists for a craft unit of employees defined under Section 6(2) of the Act. In order to acknowledge "the professional status" of the physio and occupational therapist the Board must accept at face value the applicant's submissions in order to justify the restrictive and fragmented approach to determining under section 6(1) a professional unit confined to physio and occupational therapists. We are not prepared in the circumstances before us to accept the appropriateness of a separate unit of therapists based solely on claims for professional status unrecognized under the terms of The Labour Relations Act. The existence of a viable unit of employees for the full time employees demonstrates that the particular concerns of the physio and occupational therapists can be anticipated and provided for in a collective bargaining agreement. Furthermore, the Board in determining the appropriate unit pays special regard to the functional coherence and interdependence of groups or categories of employees from an operational sense in the process of discharging the purposes created by the employer's enterprise. (See; The Falconbridge Nickel Mines Ltd. Case OLRB M.R. September 1966, 379). In this instance, we have noted that the pervasive theme in the operation of the respondent's home care plan is "the team approach" to resolving difficulties arising out of the treatment and rehabilitation of the patient. The application of the professional skills of the therapist for that purpose is undoubtedly a significant and essential service in achieving the goals of the programme. And indeed the functions of the secretary and the registered nursing assistant also contribute in some measure to the rehabilitation of the patient. Nevertheless, what is important from the Board's perspective in determining the bargaining unit is the shared interests of employees in negotiating through a bargaining agent terms and conditions of employment that accounts for their legitimate concerns. We find no basis for concluding that when non-professionals are lumped together with "professionals" the erosion of the specialists skills in discharging their duties and responsibilities will result. The Board's concern is that the bargaining unit be viable in the sense that it maintains operational efficiency in the employer's business uninterrupted by the establishment of a collective bargaining relationship. (See for example; The East York Public Library Board case OLRB M.R. March 1971 120; The Regional Municipality of York Case OLRB M.R. June 1971 316). It has been demonstrated that this balance may be achieved through the vehicle of an all employee bargaining unit encompassing the "professional" employees whom the applicant



seeks to separate. (See; The Toronto General Hospital Case OLRB M.R. January 1972, 33).

12. In reaching this conclusion the Board is not unmindful of our recognition of registered and graduate nurses engaged in a nursing capacity as a separate but appropriate bargaining unit. (See; The Brockville General Hospital Case OLRB M.R. January 1967 776). Indeed, although the nurses retained by the respondent to participate on the home care plan are on a contractual basis through the Victoria Order of Nurses, nevertheless public health nurses in the respondent's employ are represented per se by the Nurses' Association under a collective agreement negotiated through voluntary recognition. The Board is concerned that it appear even handed in treating like bargaining situations consistently and fairly. We have concluded however that the nurses have established a past practice of bargaining separately and apart from other employees engaged in direct patient care that defies reversal at this late date. In this regard we have recognized the difficulties to the collective bargaining process that would be created in our dealings with the claims of registered nursing assistants for recognition as a separate unit of employees. That is to say, the resultant fragmentation of bargaining units compelling the employer to engage in multiple bargaining would be simply incompatible with sound industrial relations in the bureaucratic white collar setting. In treating the claims of the applicant's proposed unit we have foreseen and anticipated in a like manner the same difficulties in resolving to deny the request for a separate unit of part-time physio and occupational therapists. (See; The Essex Health Association Case OLRB M.R. November 1967 716; The York County Health Unit Case OLRB M.R. April 1967, 62; The Board of Health of Niagara District Health Unit OLRB M.R. January 1970, 1199).

13. The Board has purposely avoided dealing directly with the alternate argument made by the applicant with respect to its claim for bargaining rights for a paramedical unit of employees as defined in "The Johnston Report". In considering the applicant's submissions the Board simply is not convinced that the recommendations emanating from that report were intended to be applied to the operations of a Regional Health Unit. The information relied upon in that report resulted from a study of the operations of a variety of skilled and semi-skilled employees in a hospital setting. These employees if entitled to representation for collective bargaining purposes would be governed by the relevant provisions of The Hospital Labour Disputes Arbitration Act. In other words, the Board is not satisfied, even assuming the efficacy of the Report's recommendations, that they bear any relevance to the facts and circumstances before us. Or,

in another sense, the Board's rulings in the instant case are not intended to prejudice or adversely affect a party's position with respect to the appropriate "paramedical unit" in an application for certification involving physio and occupational therapists and other allied specialists employed in a hospital setting.

14. The Board therefore finds that all employees of the respondent regularly employed for not more than twenty-four hours per week in The Regional Municipality of Niagara save and except Assistant Secretary Treasurer and persons above the rank of Assistant Secretary Treasurer, Junior Public Health Consultant, Senior Public Health Consultant and those covered by subsisting collective agreements, constitute a unit of employees of the respondent appropriate for collective bargaining.

15. The Board is satisfied on the basis of all the evidence before it that less than thirty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on November 5, 1974, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

16. The application is therefore dismissed.

0019-75-R: Francis Slade (Applicant) v. Service Employees Union, Local 204 affiliated with the S.E.I.U., AFL-CIO:CLC (Respondent).

RE: BIRCHCLIFF NURSING HOME

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: R. Campbell for the applicant; R. Nannini for the respondent; V. Chadee for a group of employees.

DECISION OF THE BOARD: April 22, 1975.

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2. This is an application for a declaration that the respondent no longer represents the employees in the bargaining units for which it is the bargaining agent. The application is brought pursuant to sections 49 and 50 of The Labour Relations Act.

3. At the outset of the hearing it was agreed that the employees in question are employees of Birchcliff Nursing Home, a "hospital" within the meaning of section 1(1)(aa) of The Hospital Labour Disputes Arbitration Act, which reads as follows:

"1.-(1)(aa) 'hospital' means any hospital sanitarium, sanatorium, nursing home or other institution operated for the observation, care or treatment of persons afflicted with or suffering from any physical or mental illness, disease or injury or for the observation, care or treatment of convalescent or chronically ill persons, whether or not it is granted aid out of moneys appropriated by the Legislature and whether or not it is operated for private gain, and includes a home for the aged;"

(emphasis added)

4. It was also agreed that the respondent union holds the bargaining rights for certain full-time employees of the nursing home (by virtue of a certificate issued to it on January 18, 1974) and, further, that the respondent trade union holds bargaining rights for certain part-time employees (by virtue of a certificate issued to it on March 11, 1974). The parties also confirmed that the Minister of Labour appointed a conciliation officer on December 5, 1974, with respect to both full and part-time units. We were told that the conciliation officer's efforts have been unsuccessful and that the parties are now engaged in setting up a board of arbitration, as they are required to do under the provisions of section 5 of The Hospital Labour Disputes Arbitration Act.

5. It is clear that under section 9 of The Hospital Labour Disputes Arbitration Act the Board is without jurisdiction to entertain this application at this time. Section 9(1) of that Act reads as follows:

"9.-(1) Notwithstanding section 53 of The Labour Relations Act, where a trade union that has been certified as bargain-



ing agent for a bargaining unit of employees of a hospital has given to the employer of such employees notice under section 13 of that Act and the Minister has appointed a conciliation officer, an application for a declaration that the trade union no longer represents the employees in the bargaining unit determined in the certificate may be made only in accordance with subsection 2 of section 49 of The Labour Relations Act."

6. The effect of section 9 is that where, following certification and notice under section 13 of The Labour Relations Act, a conciliation officer is appointed, an application for termination of bargaining rights can only be made in the open period of the collective agreement which is subsequently concluded, pursuant to the provisions of The Hospital Labour Disputes Arbitration Act.

7. The entitlement to apply under section 53(1) of The Labour Relations Act for a declaration terminating bargaining rights following certification, and before a collective agreement is concluded, is quite different. Under section 53(1) such an application may be made following the exhaustion of conciliation procedures - more precisely, after conciliation has been concluded and the time limits stipulated under sections 59(1) (a), (b) or (c), as the case may be, have elapsed. However, in the case of a "hospital" within the meaning of The Hospital Labour Disputes Arbitration Act, where the right to strike (or lock out) has been replaced by compulsory arbitration, the appointment of a conciliation officer operates to bar an application for termination until the conditions stipulated in section 49(2) of The Labour Relations Act have been met: i.e., until a collective agreement has been concluded, and then only within the open period (as set out in sections 49(2) (a), (b) or (c), as the case may be) of that collective agreement.

8. The instant application also referred to section 50 of The Labour Relations Act, which reads as follows:

"50. If a trade union has obtained a certificate by fraud, the Board may at any time declare that the trade union no longer represents the employees in the

bargaining unit and, upon the making of such a declaration, the trade union is not entitled to claim any rights or privileges flowing from certification and, if it has made a collective agreement binding upon the employees in the bargaining unit, the collective agreement is void."

However, the application, on its face, made no reference to the respondent union having obtained its certificates by fraud nor did the representatives of the applicant appearing at the hearing seek to support the application on that basis.

9. For the above reasons, the application is dismissed.

7551-74-U: Herman Faria (Complainant) v. LOCAL 1285 UNITED AUTOMOBILE AEROSPACE & AGRICULTURAL WORKERS UNION OF AMERICA (U.A.W.) (Respondent).

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members J.E.C. Robinson, Q.C., and P.J. O'Keefe.

DECISION OF THE BOARD: April 28, 1975.

1. This is a complaint by Herman Faria, who claims that he has been dealt with by the respondent contrary to the provisions of section 60 of the Labour Relations Act. On March 27, 1975 the Board appointed a Labour Relations Officer to inquire into the complaint. The Board has now received the report of the Labour Relations Officer and for the reasons set out herein has determined that it is unnecessary to inquire further into the complaint by means of a hearing.

2. The complainant is an employee of Chrysler Canada Ltd. ("Chrysler") at its National Parts Depot in Mississauga, Ontario. On September 25, 1974 he was involved in an automobile accident and sustained injuries which prevented him from performing his duties and responsibilities as an employee. He made application for benefits under the Sickness and Accident Insurance Program in force at Chrysler. His claim was honoured and he received benefits under the plan until November 9, 1974. When his benefits ceased in November, he sought to have them reinstated and to this end carried on correspondence with Chrysler's Labour Relations Manager, Mr.

Speight. On December 12, 1974 he was examined by a physician chosen by Aetna Casualty Company of Canada, the insurer under the Sickness and Accident Insurance Program. On December 16, 1974 he received a letter from Aetna advising that Dr. Berry's examination had revealed no symptoms of continuing total disability and that he had been certified as fit to return to work. The letter also stated that Aetna had no alternative but to terminate his benefits as of December 12, 1974.

3. On December 20, 1974 the complainant received a letter from Chrysler Canada Ltd. confirming that his sickness and accident benefits were denied, effective November 10, 1974. The complainant states that in February, 1975, he requested the respondent's Plant Chairman, Gordon Cobden, to take action on his behalf. As a result of his request, Cobden wrote to Chrysler on February 21, 1975 as follows:

"The Union would like you to initiate positive action on behalf of Mr. H. Faria, as we feel he has been unjustly dealt with by your Insurance Company Board, pertaining to his S & A. We would like a meeting of the Board to convene immediately to review this decision."

In addition, Cobden received from Faria and submitted on his behalf a grievance covering the same complaint.

4. As to the request, contained in the respondent's letter of February 21st, the investigation of the Labour Relations Officer disclosed that the claim is under review in accordance with the review provisions of the insurance programme. As to the grievance, it was denied by Chrysler on February 24, 1975, on two grounds: first, that insurance claims are not subject to the grievance procedure set out in the governing collective agreement; and secondly, and in the alternative, that the grievance was untimely.

5. The respondent and Chrysler Canada Ltd. are parties to a collective agreement dated November 27, 1973. Section 45 of that agreement stipulates that the insurance programme is incorporated and made part of the collective agreement. The Insurance Program contains the following provisions for review of denied claims:

#### "INFORMAL PROCEDURE FOR REVIEW OF DENIED CLAIMS

To afford employees a means by which they can seek review and possible reconsideration



of a denied claim, internal procedures of Chrysler Canada Ltd. and the Aetna Life Insurance Company will provide a procedure somewhat along the following lines:

(1) The formal notification letter from the plant group insurance representative by which the employee is advised that his claim is denied will inform the employee that if he has any questions regarding the denial they may be referred to the plant group insurance office.

(2) Upon request, the plant group insurance office will advise what if anything the employee can do to support his claim for payment of benefits.

(3) The employee may request a Union representative to discuss insurance matters with local management to obtain this information.

(4) Upon request, a representative of local management will receive the employee's case with the Union representative. At this meeting, there will be furnished to the Union representative all the material pertinent to the claim including any detailed explanation of the reasons for the denial of the claim.

(5) If, after discussion with the representative of local management, the Local Union representative contests the position of management, the case may be referred to the Aetna Life Insurance Company for review.

(6) Such review will be conducted by a committee of three Aetna Life Insurance Company employees.

(7) Aetna will report to the Union and to the Corporation its action as the result of such review."

6. It thus appears that a special review procedure, separate and apart from the grievance and arbitration provisions of the collective agreement, provided for rejected insurance claims. However, it is unnecessary for the Board to make a determination as to whether the subject matter of the grievance is arbitrable under the collective agreement. As soon as the union was approached about the matter, it promptly launched action on two fronts. The review procedure under the Insurance

Program is still in progress. The complainant makes no allegations which support the conclusion that the respondent has not been diligent in assisting him in pursuing this review procedure. As to the grievance, there is considerable doubt, as we have suggested, that the matter is arbitrable. However, the union did file a grievance on behalf of the grievor when the matter was brought to its attention.

7. In our view, there is no foundation, either on the facts as set out in the formal complaint, or in the statement obtained from the complainant by the Labour Relations Officer, for any suggestion that the respondent has acted in a manner that is arbitrary, discriminatory or in bad faith in failing to pursue the grievance to arbitration. A complainant alleging a violation of section 60 must, to justify a hearing, at least allege facts which, if proven, could be characterized as conduct of the sort prohibited by that section. The complainant has failed to do so in the instant case. The bare assertion that a grievance has not been elevated to arbitration is not, in our view, sufficient.

8. The only suggestion of impropriety asserted by the complainant is that the respondent did not file the grievance as soon as it was notified of the matter. On the material before us, the complainant is hardly in a position to be critical of the respondent for delay, having himself failed to bring the matter to the union's attention until February, 1975, when he was aware of the termination of benefits in the fall of 1974. However, apart altogether from the complainant's own conduct, there appears to be no substance to the charge of delay on the respondent's part. As we have said, the respondent acted promptly to assert the claimant's claim as soon as it came to its attention.

9. Section 10(a) of the collective agreement permits the employer "to decline to consider any grievance, the alleged circumstances of which originated more than five regular working days prior to its presentation". If the matter is the proper subject of a grievance at all, the five-day period referred to in section 10(a) had apparently expired long before the complainant saw fit to bring the matter to the respondent's attention.

10. Nothing in this decision is intended to imply that, had the respondent been responsible for late filing of the grievance so as to preclude arbitration, it would necessarily have been in breach of its duty of fair representation under

section 60. Such failure could occur - through inadvertence, for example - without involving conduct of the sort prohibited by section 60. On the other hand, failure to meet time limits might, in some circumstances, support a suggestion of mala fides on the union's part. It would depend entirely upon the particular circumstances. However, as we have said, the problem does not arise in the instant case.

11. For the foregoing reasons, the Board can see no useful purpose to be served in listing this complaint for hearing. If the Board has misunderstood the basis for the complaint or if there are other facts which the complainant believes to be material to his allegation that the trade union has acted in a manner that is arbitrary, discriminatory or in bad faith, he has the right to request the Board to reconsider its decision, pursuant to section 95(1) of the Labour Relations Act.

12. Accordingly, the complaint is dismissed.

7259-74-R: Ontario Nurses' Association (Applicant) v. MEMORIAL HOSPITAL, BOWMANVILLE (Respondent) v. Canadian Union of Public Employees and its Local #137 (Intervener).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members  
H. J. F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: K. R. Lewis appearing for the applicant; E. T. Mustard appearing for the respondent; Harold Wrightman appearing for the intervener.

DECISION OF THE BOARD: April 28, 1975.

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2. At the meeting convened by the Examiner, Mr. J. E. Leonard, the parties resolved the issues that were in dispute among them as set forth in the terms of his appointment. The parties agreed on the description of two bargaining units. Both bargaining units excluded persons covered by subsisting collective agreements. These two agreed bargaining units define full-time and part-time units of registered and graduate nurses engaged in a nursing capacity.

3. However, the parties are in dispute over the inclusion or exclusion of two non-registered graduate



nurses. The intervener claims that these two persons are covered by a collective agreement between the respondent and the intervener which runs from January 11, 1974, until February 28, 1976. Article 2.01, the recognition clause of this collective agreement states:

"The Employer recognizes the Union as the exclusive bargaining agent for all employees of the Employer at its hospital in Bowmanville, save and except professional medical staff, graduate nursing staff, under-graduate nurses, graduate pharmacists, under-graduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, chief engineer, office staff, and persons regularly employed for not more than twenty-four (24) hours per week. Persons regularly employed (as agreed to by the employer) for more than twenty-four (24) hours per week but less than the equivalent of a full time employee shall be given fringe benefits based on fifty (50) percent of the benefits of a full time person as per the present union agreement. (Emphasis supplied)

4. The recognition clause of the collective agreement appears to exclude these two non-registered graduate nurses. However, the Schedule of Hourly Wages Rates at the end of the collective agreement lists a number of classifications and wage rates. Among the classifications is one entitled "Non-Registered Grad. Nurse". The parties agreed that this refers to non-registered graduate nurses.

5. The applicant takes the position that the two non-registered graduate nurses are not covered by this collective agreement because they are specifically excluded in the recognition clause of the collective agreement. The intervener argues that because the category of non-registered graduate nurse is referred in the collective agreement's schedule of hourly wage rates and because they have been paid in accordance with the wage rates set forth in the

collective agreement, they are therefore covered by the collective agreement. The respondent agrees that the two non-registered graduate nurses are paid in accordance with the wage rates set forth in the collective agreement, agrees there is a conflict over whether these two persons are covered by the collective agreement and expresses the opinion that the non-registered graduate nurses share a community of interest with the nurses who form the subject matter of this application.

6. There is clearly a conflict between the exclusionary provisions of the recognition clause and the inclusionary provisions of the wage rates set forth in the collective agreement between the respondent and the intervener. It may well be that in the circumstances of the collective bargaining relationship between the respondent and the intervener, the respondent would be estopped from denying that the intervener is the bargaining agent of the two non-registered graduate nurses. However, what is the position with respect to a third party's claim, such as the applicant? The answer to this question is to be found after considering the conduct of the respondent and the intervener and the principles of law concerning the construction of written documents.

7. In the Evans Lumber and Builders Supply Ltd. case, 58 CLLC ¶18,117, the Board considered an application for certification wherein the respondent employer and the incumbent trade union were parties to a collective agreement which they claimed applied to the employees who were affected by the application for certification. The collective agreement purported to cover all employees with certain exclusions which were not relevant but the wages and other working conditions of the employees for whom the applicant was seeking certification were not governed by the collective agreement. The Board held that while the employees were not covered by the collective agreement between the respondent employer and the incumbent trade union there was no evidence which would justify a finding that the incumbent trade union had abandoned its bargaining rights for these employees which stemmed from a preceding collective agreement. Clearly the Board was looking at all the surrounding circumstances including the conduct of the parties to the collective bargaining relationship.

8. In the instant case, there is apparently an inconsistency or repugnancy between the recognition clause

and the Schedule of Hourly Wage Rates. In the past the courts approached inconsistencies on the basis that if an earlier clause in a deed or contract is followed by a later clause which destroys altogether the obligation created by the earlier clause, the later clause will be rejected as repugnant and the earlier clause will prevail. See, for example, Doe dem. Meyers et al. v. March (1852) 9UCQB 242; Owsten v. Williams et al (1858) 16 UCQB 405. However, if a later clause does not destroy but only qualifies the earlier clause, then the two are read together and effect is to be given to the intention of the parties as disclosed in the deed or contract as a whole. If the relevant clauses can be read so as to give a reasonable meaning to each of them the courts have not rejected the later clauses as being repugnant unless there is no reasonable way of reconciling the two clauses. See Hassard v. Peace River Co-operative Seed Growers Association Ltd. [1954] 2 D.L.R. 50 and Forbes v. Git et. al. [1922] 1 A.C. 256.

9. In our opinion, the parties to the collective agreement have interpreted the exclusionary words "graduate nursing staff" in the recognition clause to mean "nurses who are both registered and graduate but not including non-registered graduate nurses". The conduct of the respondent and intervener in providing a wage schedule for non-registered graduate nurses and giving effect to rates established thereunder support the proposition that non-registered graduate nurses are covered by the collective agreement. In our view, the recognition clause and the wage schedule are not clearly repugnant and may be reconciled so as to give effect to both. In the result, the Board finds that the two non-registered graduate nurses are covered by the collective agreement and are accordingly not included in the bargaining units defined in paragraphs ten and twelve herein.

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14. Certificates will issue to the applicant with respect to the bargaining unit defined in paragraphs 10 and 12 herein.

7327-74-U: Philip Vinet (Complainant) v. NATIONAL PROTECTIVE SERVICE CO. LTD. (Respondent).

- and -

7328-74-U: Daryl Merritt (Complainant) v. NATIONAL PROTECTIVE SERVICE CO. LTD. (Respondent).



BEFORE: D. H. Kates, Vice-Chairman, and Board Members  
P. J. O'Keefe and W. H. Wightman.

APPEARANCES AT THE HEARING: J. P. Nelligan, Q.C., for the  
complainants; W. D. Chilcott, Q.C., for the respondent.

DECISION OF THE BOARD: April 28, 1975.

1. The Board directs that these complaints be consolidated and treated as one complaint.

2. These are two complaints filed under section 79 of the Act wherein it is alleged that the grievors; namely, Daryl Merritt and Philip Vinet were discharged by the respondent employer contrary to sections 58(a) and 61 of the Act.

3. During the course of the hearing scheduled in this matter an issue arose pertaining to the Board's jurisdiction to accord the grievor's the relief sought. The question to be resolved by the Board was whether the grievors exercised managerial functions within the meaning of section 1(3)(b) of the Act and thereby at the material time of their termination by the respondent were not employees entitled to relief under the unfair labour practice provisions as alleged in the complaint. [See; *Jarvis v Associated Medical Services Ltd. et al* 64 CLLC ¶15,511 (SCC) at p.845-36 (per Cartwright J)].

4. The respondent is a company engaged in the business of providing security guard services for customers located in the Ottawa area. Their clients included The National Gallery of Canada and The Bell Northern Research Centre. Mr. Merritt at one time was classified as "a captain" in charge of the respondent's security guard operations at the National Gallery. At the material time of his discharge on January 10, 1975, he was engaged on a trial basis in an administrative capacity and was classified as "an executive administrative officer". Mr. Philip Vinet commenced employment as a driver for the respondent in February 1973, and has since been promoted to the positions of corporal, sergeant and ultimately lieutenant. Counsel for the grievors conceded that Mr. Merritt at all material times was engaged by the respondent in a managerial capacity. He argued, however, that Mr. Vinet did not exercise managerial functions within the meaning of S1(3)(b) of the Act but was a supervisor whose status was analogous to that of "a lead hand" in a factory setting. Counsel also requested that the Board grant the grievor, Mr. Merritt, leave to amend the complaint to permit

an allegation that the respondent violated S71(1) of the Act. (See, Section 80 of the Act). In this regard it was submitted that the efforts of the grievors to form a trade union was initiated with a view to filing an application for certification with this Board. It therefore followed that the respondent on learning of these efforts anticipated the likelihood of the grievor's participation in proceedings under the Act and wrongfully sought and effected the discharge.

5. Counsel for the respondent argued that Mr. Vinet exercised duties and responsibilities within the meaning of section 1(3)(b) of the Act and was therefore disentitled to the relief requested in his complaint. Furthermore, counsel strenuously objected to the grievor's motion for leave to amend the complaint.

6. Mr. Philip Vinet generally described his duties and responsibilities as lieutenant in terms of the scheduling and deployment of security guards and their supervision once assigned to their posts. In this regard, Mr. Vinet was couched with the collateral duties of indoctrinating and training new personnel when hired by the respondent. At the material time of the filing of this complaint Mr. Vinet worked out of the National Gallery. Approximately two dozen full time employees and one hundred and sixty part time personnel are assigned to service the Gallery on a twenty-four hour basis. Mr. Vinet's principal chore was the scheduling and assignment of these employees to their posts. His only restriction in performing this duty was in assuring himself that full time security guards did not exceed a maximum of forty-eight hours of work per week. In that event, Mr. Vinet would contact part time employees selected from a rostrum of available employees who would be asked to report for work. In performing his supervisory functions Mr. Vinet would not only inspect the guards with respect to deployment at their post but also in connection with their department.

7. While at the National Gallery, Mr. Vinet is answerable to Mr. Carter, the captain of security guards services. Any problems requiring disciplinary action are reported to Mr. Carter. In this regard, Mr. Vinet has reprimanded an employee for showing up "under the influence". In the event the infraction was repeated, the matter would be reported to Mr. Carter. Mr. Vinet is consulted by Mr. Carter with respect to promotion and pay increases. For example pay rates are based on an employee's seniority, ability, smartness and job performance. Mr. Vinet because of his supervisory responsibilities would often be consulted

on the merits of particular pay increases or promotions. Mr. Vinet also was responsible for maintaining and reporting the time schedules of each employee.

8. Mr. Vinet when assigned to smaller agencies such as The Bell Northern Research Centre, would be in complete charge of the operation. At the Bell Northern, he would be responsible for the scheduling and deployment of fifty to sixty security guards. In such instances, Mr. Vinet was answerable to Mr. Merritt to Mr. Lamont, the general manager. He would remain in touch with these officers by telephone with respect to problems arising out of this particular assignment. In a general sense the same duties and responsibilities would be performed by Mr. Vinet at this posting as in an assignment to The National Gallery. The significant difference was that he would be "the top man" at the agency and in effect was "the company's representative on the spot".

9. Mr. Vinet neither hires nor participates in the disciplining of employees. While at the National Gallery, he described himself as "administrative assistant to Captain Carter." Captain Carter is responsible for disciplining employees for company infractions reported to him by Mr. Vinet. During the course of performing his duties, Mr. Vinet wears a uniform and is required from time to time to relieve other employees in the performance of security guards functions. As an incident to his scheduling functions Mr. Vinet has granted employees time off for business and personal concerns.

10. In dealing with the issue of Mr. Vinet's status as an employee for purposes of the Act the Board has taken into account the nature of the respondent's business in the context of the duties and responsibilities performed by Mr. Vinet. We have noted that the organizational structure of the respondent's personnel is based on the military hierarchical scale. For example, a captain would be responsible for supervising fifty or more employees at an agency such as The National Gallery. In this regard, two lieutenants are assigned to cover different shifts in performing their duties under the general supervision of the captain. While at agencies such as the Bell Northern Research Centre, the Lieutenant is responsible for approximately fifty employees and is only answerable to executive personnel stationed in the respondent's main office. Sergeants when assigned to these agencies are responsible for groups of 5 to 10 employees. The sergeant is then answerable to the Lieutenant for the department and deployment of these guards. And finally corporals are assigned to groups of 3 to 5 employees and



are responsible to the sergeant. Unlike a hospital setting where "a head nurse" may exercise supervisory functions of a similar nature to those exercised by Mr. Vinet, the authority attached to the exercise of these responsibilities are often circumscribed by the "team approach" to the decision making process. (See for example, St. Peter's General Hospital Case, Board File No. 7081-74-R). But in the context of the respondent's organizational structure described herein the decision making authority is clearly defined for persons occupying rank within that structure. As lieutenant Mr. Vinet was clearly couched with managerial functions commensurate with the requirements of running a security guard service. His principal duties require the supervision and deployment of security guards. In connection with this important function he schedules work and assigns guards to their posts. In the event of a shortage of help he contacts and requests part time employees to report for work. He trains guards and inspects their deportment. In large employment settings he is relied upon by the captain; in smaller situations he is totally responsible for servicing the operation. He restricts overtime work and permits employees time off. He neither disciplines, promotes nor grants pay increases. Nevertheless, he prepares reports based on his observation of employees and is often consulted with respect to these matters. The Board therefore finds that Mr. Vinet exercises managerial functions under S1(3)(b) of the Act.

11. As a result the complaints alleging that the grievors, Messrs. Vinet and Merritt have been discharged contrary to Section 58(a) and Section 61 are accordingly terminated. (See; The Ottawa General Hospital Case OLRB M.R. March 1974 193 at p. 199; The Ottawa General Hospital Case OLRB M.R. October 1974 714 at p. 723 and p. 727).

12. It remains for the Board to rule on counsel's motion for leave to amend the allegations filed in the complaint to permit evidence to be adduced with respect to alleged violations by the respondent of Section 71(1) of the Act. Before dealing with this issue, it is necessary for the Board to outline the circumstances giving rise to counsel's motion. During the course of counsel's examination of witnesses called to adduce evidence in support of the issues alleged in the original complaint, it became manifestly apparent to us that in the event a case is made out in favour of the grievors, the Board may very well be without jurisdiction to sanction a remedy. We therefore requested the parties to address the Board with respect to the jurisdictional issue heretofore dealt with. After the

witnesses had completed their testimony and upon resumption of the proceedings after the normal lunch adjournment counsel for the grievors requested leave to amend the allegations in order that the evidence heretofore adduced could be applied to the allegation that the respondent violated S71(1) of the Act. Counsel argued that because the grievor intended to rely on the same evidence adduced in connection with the allegations under S58(a) and S61 the respondent would not thereby be prejudiced by the amendment.

13. The Board does not agree with this submission. We are of the view that it would be unfair and contrary to S47 of The Board's Rules on Practice and Procedure to deny a party reasonable notice in advance of a hearing of the case that has to be met. If the Board were to grant counsel leave to amend the allegations the respondent would be caught at a disadvantage in that it appeared at a hearing prepared to meet allegations that have since dissipated. Nevertheless, the same party would be confronted with an allegation that, if time were afforded it, may have been readily susceptible to an answer. It is reasonable to assume in the circumstances described herein that the respondent would not have had an opportunity to prepare a reply to the alleged wrongdoing sought to be introduced. For this reason and for the reasons cited in The Skyline Forms Ltd. Case 62 CLLC ¶16,255 at p. 1083, the Board denies, at this stage in the proceedings, counsel's motion for leave to amend the allegations filed in the grievor's original complaint.

14. In light of the foregoing, the Board finds it unnecessary to make any ruling with respect to the intended Legislative thrust of section 71(1) even assuming the evidence as adduced herein is material to such an allegation. In any event, we are of the opinion that that question should be resolved by a panel of the Board that may in future be seized of the issue.

15. The proceedings are therefore terminated.

7124-74-R: The Toronto Building and Construction Trades Council, on its own behalf and on behalf of: 1. The Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227, 3233 of the United Brotherhood of Carpenters and Joiners of America 2. Labourers' International Union of North America, Ontario Provincial District Council, on behalf of Local Union 506 (Applicants) v. INDUCON CONSTRUCTION OF CANADA LIMITED AND CODECO LIMITED (Respondent).

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members P. J. O'Keefe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: R. Koskie, R. Kanter and D. Johnson for the applicants; W. Michael Temple, Q.C., D. G. Kidd and J.F.X. O'Connell for the respondents.

DECISION OF THE BOARD: April 30, 1975.

1. The applicants allege that a sale of a business within the meaning of section 55 by Codeco Limited (hereinafter called "Codeco") to Inducon Construction of Canada Limited (hereinafter called "Inducon") occurred on or about a date unknown to the applicants. The applicants allege, in the alternative, that the respondents carry on associated or related activities or businesses under common control or direction and submit that the Board should, therefore, treat the respondents as constituting one employer for the purposes of the Act and, consequently, as being bound by the various agreements referred to hereinafter.

2. Section 1(4) provides:

Where, in the opinion of the Board, associated or related activities or businesses are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination thereof, under common control or direction, the Board may treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act.

3. The respondents deny that there has been a sale of a business within the meaning of section 55 of the Act. The respondents submit that since no sale has occurred, the Board has no jurisdiction to apply the provisions of section 1(4) of the Act.

4. The respondents further submitted that the applicants, having for many years recognized the separate corporate identities of Codeco and Inducon, were guilty of laches to the detriment of the respondents in not bringing the application promptly.



5. The applicants conceded that there was no evidence that the sale of a business had occurred between the respondents. The respondent argued that that being the case the Board was without jurisdiction to proceed.

6. There is no doubt upon the evidence that the respondents carry on associated or related activities or businesses under common control or direction within the meaning of section 1(4) of the Act.

7. As was stated in H. Allaire and Sons Company Limited case, (1974) OLRB Rep., July, 457, "The power given to the Board to treat two corporations as constituting one employer is a discretionary power. The particular circumstances in each case must be weighed."

8. In the present case, the respondent Codeco was incorporated in 1958 under the laws of the Province of Ontario. It carries on business as a general contractor engaged in the construction of institutional and commercial buildings. It does not construct industrial plants. The respondent Inducon was incorporated under the laws of Canada in 1968. This company operates as a general contractor in the construction industry, both inside and outside of the Province of Ontario. It is predominately engaged in the construction of industrial buildings. The two companies have been carrying on parallel businesses in the construction industry since 1968.

9. It is agreed by the parties that Codeco entered into a working agreement with the Toronto Building and Construction Trades Council in August of 1963. By this agreement, Codeco undertook to:

- (a) "...recognize the [Toronto] Council and its affiliated unions as the collective bargaining agency for all its employees." and
- (b) "...employ only members of the unions affiliated with the [Toronto] Council and [to]...let contracts or subcontracts only to individuals or companies whose employees are members in good standing in the unions affiliated with the [Toronto] Council ..."; and

- (c) "...recognize and be bound by the agreements existing between each of the unions affiliated with the [Toronto] Council and the Toronto Builders' Exchange [now known as the Toronto Construction Association] and specifically agrees that the provisions relating to wages, hours and working conditions set forth in the said agreement shall be binding on the Company. In the event any of the said conditions of any of the said agreements are altered or amended at any time during the currency of this agreement, the Company shall be bound by such alterations and amendments."

10. It is also agreed that Codeco is bound by a collective agreement between the Carpenters' Union and the General Contractors' Section of the Toronto Construction Association effective July 24, 1972 and expiring April 30, 1975. It is further agreed by the parties that Codeco is bound by a collective agreement between the Labourers' Union and the General Contractors' Section of the Toronto Construction Association effective from August 4, 1972 and expiring April 30, 1975. In the respective collective agreements, the employer agrees to employ as labourers only members of the local union having jurisdiction in the area of the project and to hire and employ only employees who are members in good standing of the United Brotherhood of Carpenters and Joiners of America. Hiring in both instances is through the union concerned.

11. Of the overall volume of construction work done by the two companies, ninety to ninety-five per cent is done by Inducon. There is a total overall work force of about eight employees. In the Toronto area, the overall work force comprises sixty persons. Of these, six or seven hold union cards. The evidence does not disclose the distribution of membership between the two unions concerned.

12. When a contract is entered into and a project is built by the Codeco company, only the six to seven union members of the overall work force are employed on it. No non-union employees are ever used on these Codeco projects. This is in accord with the terms of the collective agreements referred to above. The employees who are not members of the union concerned are employed exclusively by Inducon and are never assigned to work on a project being carried on by Codeco. Thus, the non-union employees are confined to

Inducon jobs whereas the union members are interchanged between company projects. When the union members go to work on an Inducon project, they are paid less than the union rates set out in the Codeco collective agreements nor are any of the other provisions of those agreements made applicable to them on the Inducon jobs.

13. Victor Machado, a member of Local 506 of the Labourers' Union, testified that he had worked on both Inducon and Codeco jobs. When asked why he continued to work for Inducon at a reduced rate, he replied that it was a company for which he liked to work, notwithstanding the difference in wage rate. He said there was a possibility the union could get him a job elsewhere but that he preferred to work for Inducon. His testimony seems to indicate that the cheques issued to him might be from one or the other company, although the appropriate rates appear to have been paid.

14. The work force consists, therefore, of two distinguishable groups, one being the permanent Inducon work force of approximately fifty unorganized employees who are never transferred, and the movable group of six or seven union members who may be transferred back and forth between the two companies.

15. The question is whether, in these circumstances, the board, in the exercise of its discretion, ought to treat the companies concerned as one employer for the purposes of the Act.

16. In Industrial-Mine Installations Limited case, (1972) OLRB Rep., December, 1029, the Board said in paragraph 9 of its decision:

Section 1(4) is obviously contemplated to cure the mischief that results from being unable to properly define and tie down the employment relationship. In many situations where companies have a close relationship an employee may be shifted from one company to another so that his employment relationship, at any given period, is difficult to define in terms of one employer. So too, the number of employees employed by one of those companies at any given time may be impossible to ascertain.



17. In paragraph 11 of the same decision, the Board added the following:

Also, in some situations where a union had been granted bargaining rights for the employees of one employer, the employee could be shifted to another associated or related employer with the result that the bargaining rights which had been earned by the trade union for the employees was lost.

The decisions also points out that it is desirable that section 1(4) be applied where the situation is fresh, that is, where there are no outstanding bargaining rights in order that some global determination be made. It does not follow, however, that that situation is the only one in which the application of section 1(4) is open to the Board.

18. The evidence in the present case does not establish the presence of the mischief referred to above. There is no evidence that during the history of the parallel operations of the two companies, any application for certification was attempted, even during those periods when a nucleus of the six or seven members, divided as it may have been between the two unions, was present at Inducon. There was, in fact, no evidence offered that either of the trade unions represented any of the sixty employees in the overall work force other than the six or seven members referred to above. There was, however, evidence that in 1972, 1973 and 1974 picketing was carried on at Inducon job sites by persons who were not identified but who are not employees of either of the companies. The pickets were removed when court action was commenced. The officers of the unions advised the companies that such harassment could be avoided if Inducon would sign a collective agreement with them. Indeed, there was no evidence offered by the applicants that the unions had made any attempt to sign up as members in the usual way the non-union employees in the overall work force. There was, however, an attempt to have the Board apply the provisions of section 1(4) in an accreditation application made on September 17, 1971 by the General Contractors' Section of the Toronto Construction Association, with the Labourers' International Union of North America, Local 506 as respondent, Board File 992-71-R. In that case the Board held that it had jurisdiction in an accreditation application to inquire into matters raised under section 1(4) of the Act. The Board found, however, that in the circumstances of that case that regardless of whether or not it finally applied section 1(4), the basis of its determination

with respect to the required majority representation would not be varied. The issuance of an accreditation certificate was accordingly ordered without an inquiry into or a final decision on any issues relating to the application of section 1(4) in the circumstances of that case.

19. In considering further the matter of the mischief against which the section is directed, it is to be noted that no allegation was made by the applicants, and certainly no evidence was offered, indicating that the companies had in any way attempted to frustrate the organization of the non-union employees. The evidence is that there has been no attempt on the part of the companies to dilute the union strength with respect to Codeco by the transfer of non-union people into that company's work force. The charge is that Inducon has refused to enter into the collective agreements with the unions. Upon the evidence adduced before the Board, it is apparent that Codeco has rigidly adhered to the provisions of its collective agreements insofar as the hiring and employment of the members of the unions are concerned. The transfer of Codeco employees into the Inducon work force can, of course, not be seen to have an adverse effect on the organizational possibilities open to the unions.

20. The inescapable inference to be drawn from all of the evidence is that the applicants have been unable, or unwilling, to organize the Inducon group of employees through the normal certification procedures and are, therefore, attempting to obtain bargaining rights through the use of section 1(4) under the guise of an unsupported allegation of a sale of a business under section 55 of the Act. The Board, however, has said that the use of its discretionary power under section 1(4) is not to be sought as a substitute for obtaining bargaining rights under normal certification procedures. The subsection may, of course, be invoked during the course of a certification application.

21. By reason of the fact that the situation before the Board is not fresh (Industrial-Mine Installations Limited, *supra*), further difficulties are presented with respect to the use of the discretionary powers under section 1(4). This is so because quite apart from any commercial commitments of the company that may be affected by a change in a basic labour situation which has prevailed for over six years - a point raised in argument by the respondents - there are outstanding substantial lawful interests and rights of the unorganized employees which must be respected. In regard to the latter, we might refer, parenthetically, to

the Preamble to the Act. It states that it is in the public interest to further harmonious relations between employers and employees through collective bargaining between employers and trade unions "as the freely designated representatives of the employees". The employees of Inducon, who form the overwhelming majority of the overall work force under consideration, cannot be said to have freely designated the applicants as their representatives. Indeed, on the evidence before the Board, the case is quite to the contrary. It is incumbent upon the Board to ensure that there be no trespass through the application of section 1(4) upon the free right of choice of employees with respect to who is to be their bargaining agent. On the basis of the evidence, it is plain that the Inducon group of employees form an identifiable and consistent group which is varied only by the addition from time to time of six or seven persons who are already members of one or the other of the two unions. The unorganized group of employees has always been, and remains, open for union organization in the normal way. In the meantime, the bargaining rights of the unions with respect to Codeco remain intact.

22. Having regard to all of the evidence and the foregoing reasons, the Board, in the exercise of its discretion, declines to treat the companies concerned as one employer for the purposes of the Act.

23. In view of the above decision, the Board finds it unnecessary to comment upon the point raised by the respondents with respect to the failure of the applicants to establish that a sale under section 55 of the Act had occurred or upon the question of laches.

24. The application is accordingly dismissed.







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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING APRIL 1975

BARGAINING AGENTS CERTIFIED DURING APRIL

No Vote Conducted

7074-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the County of Brant (Respondent) v. Employee (Objector).

Unit: "all employees of the respondent employed in the operations section of the Roads Department, save and except lead hands, persons above the rank of lead hand, office staff including stockkeeper - timekeeper, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (23 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7184-74-R: Ontario Nurses' Association (Applicant) v. Baycrest Hospital (Respondent).

Unit #1: "all registered and graduate nurses employed in a nursing capacity by the respondent at Toronto, save and except head nurses, persons above the rank of head nurse, and persons regularly employed for not more than 24 hours per week." (36 employees in the unit).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

7193-74-R: Ontario Nurses' Association (Applicant) v. The Pines Nursing Home Limited (Respondent).

Unit #2: "all registered and graduate nurses regularly employed for not more than 24 hours per week in a nursing capacity by the respondent at the Pine Nursing Home, Clarkson, save and except nursing administrator and persons above the rank of nursing administrator." (8 employees in the unit).

(BARGAINING UNIT #1 - SEE APPLICATION FOR CERTIFICATION DISMISSED - NO VOTE CONDUCTED).

7216-74-R: Retail Clerks Union, Local 486 (Applicant) v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of the respondent at Smith's Falls, save and except store manager and persons above the rank of store manager." (10 employees in the unit).

(1975) 2 OLRB M.R. - PAGE 351.

7250-74-R: Warehousemen and Miscellaneous Drivers, Local Union No. 419, affiliated with the International Brotherhood of Teamsters Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Peter Gorman Limited (Respondent).

Unit: "all employees of the respondent in the Town of Vaughan, save and except managers, persons above the rank of manager, office and sales staff and students employed during the school vacation period." (13 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7258-74-R: Ontario Nurses' Association (Applicant) v. Owen Sound General and Marine Hospital (Respondent) v. Group of Employees (Objectors).

Unit #1: "all registered and graduate nurses employed in a nursing capacity by the respondent in Owen Sound, save and except head nurses, persons above the rank of head nurse and persons regularly employed for not more than twenty-four hours per week." (137 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE PERSON CLASSIFIED BY THE RESPONDENT AS INSTRUCTRESS IS INCLUDED IN THE BARGAINING UNIT.).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

7259-74-R: Ontario Nurses' Association (Applicant) v. Memorial Hospital, Bowmanville (Respondent) v. Canadian Union of Public Employees and its Local #137 (Intervener).

Unit #1: "all Registered and Graduate Nurses engaged in a nursing capacity employed by the Memorial Hospital, Bowmanville, save and except Head Nurses and persons above the rank of Head Nurse and nurses regularly employed not more than twenty-four hours per week and persons covered by subsisting collective agreements." (49 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all Registered and Graduate Nurses engaged in a nursing capacity employed by the Memorial Hospital, Bowmanville



for not more than 24 hours per week, save and except Head Nurses and persons above the rank of Head Nurse and persons covered by subsisting collective agreements." (29 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(1975) 2 OLRB M.R. - PAGE 391.

7267-74-R: Ontario Nurses' Association (Applicant) v. The Salvation Army Grace Hospital, Ottawa (Respondent).

Unit #1: "all registered and graduate nurses engaged in a nursing capacity employed by the respondent in Ottawa, save and except head nurses, persons above the rank of head nurse, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (109 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all registered and graduate nurses engaged in a nursing capacity who are regularly employed by the respondent in Ottawa for not more than twenty-four hours per week per week, save and except head nurses and persons above the rank of head nurse." (94 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7282-74-R: Labourers' International Union of North America, Local 527 (Applicant) v. Eastern Steelcasting Division of Sivaco Wire and Nail Company (Respondent).

Unit: "all employees in the Eastern Steelcasting Plant of the respondent at L'Orignal, save and except foremen, persons above the rank of foreman, office and clerical staff, sales staff, security guards, quality control inspectors, laboratory technicians, students employed during the school vacation period, and persons regularly employed for not more than 24 hours per week." (43 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7283-74-R: Retail Clerks International Association (Applicant) v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of the respondent at Oshawa, Ontario, save and except store manager and persons above the rank of store manager." (4 employees in the unit). (FOR PURPOSES OF CLARITY AND HAVING REGARD TO THE BOARD'S POSITION IN PARAGRAPH #3, THE BOARD DECLARED THAT THE SALESMAN WORKING OUT OF BOWMANVILLE IS AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED ABOVE.).

7318-74-R: Service Employees Union, Local 204, affiliated with the A.F. of L., C.I.O. C.L.C. (Applicant) v. Lincoln Place Nursing Home (Respondent).

Unit: "all employees of Lincoln Place Nursing Home in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office staff, physiotherapists and occupational therapists, security guards, professional nursing staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (69 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7320-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of The Township of Conmee (Respondent).

Unit #1: "all employees of the respondent at Conmee, save and except the Road Superintendent, persons above the rank of Road Superintendent, Township Clerk, persons regularly employed for not more than 24 hours per week and students employed during the school vacations periods." (5 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD FURTHER NOTED THAT BY AGREEMENT OF THE PARTIES THE POUNDKEEPER, CEMETERY CARETAKER, WEED INSPECTOR, BUILDING INSPECTOR AND BYLAW ENFORCEMENT OFFICER ARE NOT INCLUDED IN THIS UNIT BECAUSE THEY ARE EMPLOYED ON A CONTRACT BASIS).

Unit #2: "all employees of the respondent regularly employed for not more than 24 hours per week and students employed during the school vacation periods, save and except the Road Superintendent, persons above the rank of Road Superintendent and Township Clerk." (3 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD FURTHER NOTED THAT BY AGREEMENT OF THE PARTIES, THE POUNDKEEPER, CEMETERY CARETAKER, WEED INSPECTOR AND BYLAW ENFORCEMENT OFFICER ARE NOT INCLUDED IN THIS UNIT BECAUSE THEY ARE EMPLOYED ON A CONTRACT BASIS.).

7381-74-R: Local Union 1687 of the International Brotherhood of Electrical Workers (Applicant) v. Indian Bay Mechanical & Electrical Co. (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the Townships of Kirkland Lake and the Geographic Townships (unorganized) immediately adjacent thereto in the District of Timiskaming, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

7414-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. Adventure Construction Limited (Respondent).

Unit: "all employees of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

7430-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Town of Nickel Centre (Community Centre Board) (Respondent).

Unit: "all employees of the respondent, save and except managers, persons above the rank of manager, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (7 employees in the unit). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE SEASONAL CONCESSION OPERATORS ARE INCLUDED IN THE BARGAINING UNIT.).

7445-74-R: Office & Professional Employees International Union, Local 81 (Applicant) v. Huyck Environment Systems Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all office, clerical, and technical employees of the respondent at Thunder Bay save and except supervisors, persons above the rank of supervisor, executive secretary to the manager, all persons in the project group and professional engineers." (17 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES TO THE EFFECT THAT "PROJECT GROUP SHALL MEAN ALL ENGINEERING APPLICATION TECHNOLOGISTS; ALL PROPOSAL PROJECT ESTIMATORS; AND THE CONTRACT CO-ORDINATOR.").

7467-74-R: International Brotherhood of Painters and Allied Trades Glaziers - Local Union 1819 (Applicant) v. Acorn Products (Canada) Ltd. (Respondent).

Unit: "all installers, glaziers and glaziers' apprentices in the employ of the respondent on construction projects in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working



foreman." (5 employees in the unit). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

7470-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Town of Smiths Falls (Respondent).

Unit #1: "all employees of the respondent employed in the Smiths Falls Child Care Development Centre, save and except Supervisor and persons above the rank of Supervisors, teachers and assistant teachers." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Unit #2: "all teachers and assistant teachers of the respondent in the Smiths Falls Child Care Development Centre, save and except Supervisor and persons above the rank of Supervisor." (4 employees in the unit). (HAVING REGARD TO THE FURTHER AGREEMENT OF THE PARTIES).

7471-74-R: Candian Union of Public Employees (Applicant) v. Tricil Waste Management Limited (Respondent).

Unit: "all employees of the respondent employed at Ottawa, Ontario, save and except Assistant Service Manager and persons above the rank of Assistant Service Manager, office and clerical staff, dispatchers, and employees covered by an existing collective agreement between Canadian Union of Public Employees, Local 1338 and (Ottawa Disposal Systems) Tricil Waste Management Limited." (38 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7472-74-R: Canadian Union of Public Employees (Applicant) v. Ottawa General Hospital (Respondent).

Unit: "all employees employed by the respondent in the Detoxification Centre located at 119 Murray Street, Ottawa, Ontario, save and except supervisors, persons above the rank of supervisor, social worker, clerical staff and persons covered by any subsisting collective agreements." (6 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7473-74-R: Canadian Union of Public Employees (Applicant) v. MacLaren House Nursing Home (Respondent).

Unit: "all employees of the respondent at its home for the aged at Ottawa, Ontario, save and except supervisors, persons above the rank of supervisor, professional and medical staff, graduate and undergraduate nurses, technical personnel, office staff and persons covered under subsisting collective agreements." (6 employees in the unit).

7474-74-R: Hotel, Motel, Restaurant Employees' and Beverage Dispensers' Union, Local 757 (Applicant) v. Red Oak Inn (Respondent).

Unit: "all employees of the respondent at Thunder Bay, save and except supervisors, persons above the rank of supervisor, front office staff, security guards, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (271 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THAT THE FRONT OFFICE STAFF COMPRISES: NIGHT AUDITOR; SECRETARY; ACCOUNTING CLERK; FRONT DESK CLERK; RESERVATIONS CLERK; SWITCHBOARD OPERATOR.). (THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES THAT ASSISTANT HOUSEKEEPERS ARE EXCLUDED FROM THE BARGAINING UNIT BECAUSE THEY EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. ...).

7476-74-R: Canadian Food and Allied Workers Local Union 725, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Intercity Food Services Inc. (Respondent).

Unit #1: "all employees of the respondent at London, save and except manager, those above the rank of manager and persons regularly employed for not more than twenty-four hours per week." (2 employees in the unit).

Unit #2: "all employees of the respondent at London regularly employed for not more than twenty-four hours per week, save and except manager and persons above the rank of manager." (2 employees in the unit).

7480-74-R: Retail Clerks International Association (Applicant) v. Adams Furniture Co. Limited (Respondent).

Unit: "all employees of the respondent at Toronto, save and except personnel manager, store manager and persons above the rank of store manager." (34 employees in the unit).

7490-74-R: International Association of Machinist and Aerospace Workers, Thunder Bay Lodge 1120 (Applicant) v. Lakehead Motors Limited (Respondent).

Unit: "all licensed motor vehicle salesmen employed by the respondent at Thunder Bay, save and except managers, persons above the rank of manager, office staff, foremen, janitors, all employees of the respondent who are presently covered by the

subsisting collective agreement between the respondent and Thunder Bay Lodge 1120, International Association of Machinist and Aerospace Workers, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period or employed under a co-operative training program." (11 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7495-74-R: Retail Clerks International Association (Applicant) v. McManus Motors Limited (Respondent).

Unit: "all licensed motor vehicle salesmen of the respondent at London, save and except managers and persons above the rank of manager." (13 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7499-74-R: Retail Clerks International Association (Applicant) v. Forest City Plymouth Chrysler Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all licensed motor vehicle salesmen of the respondent at London, save and except managers and persons above the rank of manager." (11 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7500-74-R: Retail Clerks International Association (Applicant) v. Sinclair Pontiac Buick Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all licensed Motor Vehicle Salesmen of the Respondent at London, save and except managers and persons above the rank of manager." (7 employees in the unit). (AGREEMENT OF THE PARTIES).

7505-74-R: Canadian Union of Public Employees (Applicant) v. Corporation of the Town of Sioux Lookout (Respondent).

Unit: "all office, clerical and technical employees of the respondent at Sioux Lookout, save and except clerk-treasurer, deputy clerk-treasurer and employees covered by a subsisting collective agreement between the respondent and Local 87, Canadian Union of Public Employees." (3 employees in the unit).

7509-74-R: Office & Professional Employees International Union (Applicant) v. Canadian Shipbuilding & Engineering Limited (Respondent).

Unit #1: "all office, clerical and technical employees of the respondent employed in its office at Thunder Bay, save and



except supervisors, persons above the rank of supervisor, secretary to the personnel manager, students employed during the school vacation period, persons regularly employed for not more than twenty-four hours per week and persons covered by subsisting collective agreements." (22 employees in the unit).

Unit #2: "all office, clerical and technical employees of the respondent at Thunder Bay, regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (2 employees in the unit).

7517-74-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. The Regional Municipality of Waterloo (Respondent).

Unit: "all employees of The Regional Municipality of Waterloo at Sunnyside Home, Kitchener, regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor and registered nurses and graduate nurses." (23 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7519-74-R: Retail Clerks International Association (Applicant) v. Rossini Bros. Limited (Respondent).

Unit: "all Licensed Motor Vehicle Salesmen in the employ of the respondent at Chatham, Ontario, save and except managers and persons above the rank of manager." (3 employees in the unit).

7539-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. DeLoraine Construction Ltd. (Respondent).

Unit: "all employees of the respondent engaged in concrete forming on residential building projects in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

7541-74-R: Laborers' International Union of North America, Local 247 (Applicant) v. Mirco Contractors Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Lennox and Addington, and the County of Frontenac and the Townships of Rear of Leeds and Lansdowne, Rear of Yonge and

Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

7544-74-R: Thunder Bay Lodge 1120 International Association of Machinists and Aerospace Workers (Applicant) v. Pinewood Mercury Sales Limited (Respondent).

Unit: "all licensed motor vehicle salesmen employed by the respondent at Thunder Bay, save and except managers, persons above the rank of manager, office staff, foremen, janitors, all employees of the respondent who are presently covered by the subsisting collective agreement between the respondent and Thunder Bay Lodge 1120, International Association of Machinists and Aerospace Workers, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period or employed under a co-operative training program." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7548-74-R: Service Employees Union, Local 204 (Applicant) v. White Eagles Nursing Homes Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at White Eagles Nursing Homes Limited in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, registered nurses, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (45 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARIFICATION, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT REGISTERED NURSING ASSISTANTS EXERCISE MANAGERIAL FUNCTIONS AND ARE EXCLUDED FROM THE BARGAINING UNIT.).

7549-74-R: The Carpenters' District Council of Toronto and Vicinity, on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Albert Joseph Longo Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

7552-74-R: Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Delcon Electric Limited (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

7564-74-R: Teamsters Local 938, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. The Clorox Company of Canada, Ltd. The Martin-Brower Company Division (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent working at and out of Brampton, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (26 employees in the unit).

7565-74-R: Christian Labour Association of Canada (Applicant) v. I.B. Mechanical & Electrical Co. (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the County of Renfrew, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (HAVING REGARD TO THE FOREGOING).

7566-74-R: Canadian Paperworkers Union (Applicant) v. T B C Converting Limited (Respondent).

Unit: "all employees of the respondent at Guelph, save and except foremen, persons above the rank of foreman, office and sales staff." (7 employees in the unit).

7570-74-R: International Association of Bridge, Structural & Ornamental Ironworkers, Local 759 (Applicant) v. Paul A. Laurence Company (Respondent).

Unit: "all ironworkers in the employ of the respondent in the District of Rainy River, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

7572-74-R: International Association of Machinists and Aerospace Workers (Applicant) v. Canvil, Ltd. (Respondent).



Unit: "all office and technical employees of the respondent at Simcoe, Ontario, save and except supervisors, persons above the rank of supervisor, confidential secretary to the President and sales staff." (18 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7577-74-R: Christian Labour Association of Canada (Applicant) v. Indian Bay Limited (I.B. Mechanical & Electrical Co.) (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the Townships of Chamberlain, Marter, Bayly, Dack, Evanturel, Ingram, Beauchamp, Armstrong, and Hilliard in the District of Timiskaming, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

7578-74-R: Christian Trade Unions of Canada (Applicant) v. Unger Nursing Homes Limited (Respondent).

Unit: "all employees of the respondent at Hamilton, save and except nurses-in-charge and persons above the rank of nurse-in-charge." (41 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0001-75-R: Canadian Union of Public Employees (Applicant) v. The Regional Municipality of Hamilton-Wentworth (Respondent).

Unit: "all employees of the respondent employed at its home for the aged known as Macassa Lodge in the Regional Municipality of Hamilton-Wentworth, who are regularly employed for not more than 24 hours per week, save and except administrator, assistant administrator, chief engineer, head housekeeper, head maid, food supervisor, head cook, director of nursing, maintenance personnel, students employed during the school vacation period, students attending school, students employed pursuant to a co-operative education program, and employees covered by subsisting collective agreements." (73 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0010-75-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. National Grocers Company Limited (Respondent).

Unit: "all office and clerical employees of the respondent at Owen Sound, save and except office manager, persons above the

rank of office manager, sales staff, buyers, students employed during the school vacation period and persons covered by the subsisting collective agreement between the applicant and the respondent." (11 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0013-75-R: The Hotel and Restaurant Employees Union, Local 743, affiliated with the Hotel and Restaurant Employees and Bartenders International Union, W. & D. L. C. & C.L.C. (Applicant) v. Seaway Inn (Respondent).

Unit: "all desk clerks, switchboard operators, and cashiers, in the employ of the respondent at the Seaway Inn in Windsor, Ontario, save and except employees who are regularly employed for not more than 24 hours per week." (11 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0022-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Royal Renovations (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0025-75-R: Christian Trade Unions of Canada (Local 6) (Applicant) v. J-J Painting and Decorating (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (HAVING REGARD TO THE FOREGOING).

0034-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. H. M. A. Construction (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

0052-75-R: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local #128 (Applicant) v. Combustion Engineering-Superheater Ltd. (Respondent).

Unit: "all employees of the respondent at Cornwall, save and except foremen, persons above the rank of foreman, and office staff." (4 employees in the unit).

0053-75-R: Canadian Union of Public Employees (Applicant) v. Northumberland County (Respondent).

Unit: "all employees of the respondent at the Golden Plough Home for the Aged, save and except supervisors, persons above the rank of supervisor, administrator, secretary to the administrator, professional and medical staff, graduate and undergraduate nurses, housekeeper, persons covered by a subsisting collective agreement between the applicant and the respondent and students employed during the school vacation period." (11 employees in the unit).

0055-75-R: Service Employees Field Staff Union (Applicant) v. Service Employees Union, Local 204 (Respondent).

Unit: "all field representatives employed by the respondent in the Counties of Peel, Dufferin, Simcoe, Durham, York, Ontario, Victoria, Brant, Lincoln, Welland, City of Cambridge, save and except supervisors and persons above the rank of supervisor, office and clerical staff, and students employed during the school vacation period." (7 employees in the unit).

0058-75-R: Service Employees Union, Local 204 affiliated with the AFL-CIO-CLC (Applicant) v. Modern Building Cleaning a Division of Dustbane Enterprises Limited (Respondent).

Unit: "all employees of the respondent employed at Queen's Park office extension being Mowat, Hearst, Hepburn, MacDonald and Ferguson Blocks, in Metropolitan Toronto, save and except foreladies and foremen and persons above the rank of forelady and foreman, office staff and employees who are regularly employed for not more than 24 hours per week." (106 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0064-75-R: Office and Professional Employees International Union Local 343 (Applicant) v. Ontario Secondary School Teachers' Federation (Respondent).



Unit: "all office and clerical employees of the respondent in the City of Toronto, save and except supervisors, persons above the rank of supervisor, the secretary to the President and Provincial Executive, the secretary to the General Secretary, the secretary to the Association General Secretary, and the secretary to the Personnel Manager." (43 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0069-75-R: Canadian Paperworkers Union (Applicant) v. Regal Stationery Company Limited (Respondent).

Unit: "all employees of the respondent in the Village of Omeme, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, and persons regularly employed for not more than 24 hours a week and students employed during the school vacation period." (129 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0088-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Overhead Door Co. (Thunder Bay) a Division of Maier Hardware Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0090-75-R: Labourers' International Union of North America, Local 837 (Applicant) v. Arthur G. McKee and Company of Canada Ltd. (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Niagara and the County of Haldimand, engaged in survey work, save and except party chief, persons above the rank of party chief and persons covered by a subsisting collective agreement between the Labourers International Union of North America and National Constructors Association." (16 employees in the unit).

0107-75-R: Christian Labour Association of Canada (Applicant) v. Al. Smith Plastering & Partition Co. Ltd. (Respondent).

Unit: "all lathers, lathers' apprentices, plasterers, plasterers' apprentices and construction labourers in the employ of the respondent in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

6702-74-R: Printing and Graphic Communications Union No. N-1 of the International Printing and Graphic Communications Union (Applicant) v. Toronto Star Limited (Respondent) v. Toronto Mailers' Union No-5 (Intervener #1) v. International Association of Machinists and Aerospace Workers (Intervener #2).

Unit: "all employees of the respondent at its Plants in the Province of Ontario, engaged in mailing room work, save and except foremen, persons above the rank of foreman, confidential secretary to the mailing room superintendent at 1 Yonge Street, Toronto, those persons employed by the respondent at its circulation depots and those employees covered by a current collective agreement entered into by the respondent with Intervener #2". (326 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		422
Number of persons who cast ballots	331	
Ballots segregated and not counted	45	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	150	
Number of ballots marked in favour of intervener #1	11	
Number of ballots marked in favour of no trade union	123	

7335-74-R: International Woodworkers of America (Applicant) v. Andrew Malcolm Furniture Co. Ltd. (Respondent).

Unit: "all employees of the Andrew Malcolm Furniture Co. Ltd. at its operation in Kincardine, Ontario, save and except foremen, persons above the rank of foreman, assistant foreman, foreladies, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation." (79 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		54
Number of persons who cast ballots	51	
Ballots segregated and not counted	5	
Number of ballots marked in favour of applicant	35	
Number of ballots marked against applicant	11	

7451-74-R: United Electrical, Radio and Machine Workers of America, (UE) (Applicant) v. Westinghouse Canada Limited (Respondent).

Unit: "all employees of the Respondent at its Plant located at Huron Street and Clark Sideroad, London, Ontario, save and except foremen and supervisors, those above the rank of foreman and supervisor, professional engineers, nurse, secretaries to each of the Plant Manager, the Personnel Manager, the Manager of Station Products, the Manager of Protective Products and the Manager of Manufacturing, Personnel Department, buyers, marketing negotiators, manufacturing engineers, industrial engineers, analysts, assistant engineering mechanical, assistant engineering electrical, section head cost accounting, co-ordinators, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period, students employed on a co-operative training programme, and those covered by the collective agreement between the Respondent and the United Electrical, Radio and Machine Workers (UE), Local 546." (87 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list	49
Number of persons who cast ballots	46
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	30
Number of ballots marked against applicant	15

7493-74-R: International Woodworkers of America (Applicant) v. Rapp Package (Canada) Inc. (Respondent).

Unit: "all employees of Rapp Package (Canada) Inc., Pembroke, Ontario, save and except foremen, persons above the rank of foreman, foreladies, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (39 employees in the unit).

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	34
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	10



Applications Certified Subsequent to Post-Hearing Vote

7020-74-R: Canadian Union of Public Employees (Applicant) v. La Verendrye Hospital (Respondent).

Unit: "all lay employees of the respondent at Fort Frances regularly employed for not more than 24 hours per week save and except supervisors and persons above the rank of supervisor, assistant to the Comptroller, Secretary to the Controller, bookkeepers, professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, graduate dietitians, student dietitians, technical personnel, office staff and chief engineers." (68 employees in the unit). (FOR PURPOSES OF CLARITY, TECHNICAL PERSONNEL COMPRISE OF PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.).

Number of names of persons on revised voters' list		64
Number of persons who cast ballots	43	
Number of ballots marked in favour of applicant	43	
Number of ballots marked against applicant	0	

7184-74-R: Ontario Nurses' Association (Applicant) v. Baycrest Hospital (Respondent).

Unit #2: "all registered and graduate nurses regularly employed for not more than 24 hours per week in a nursing capacity by the respondent at Toronto, save and except head nurses and persons above the rank of head nurse." (4 employees in the unit).

Number of names of persons on voters' list		12
Number of persons who cast ballots	3	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	0	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

7186-74-R: Ontario Nurses' Association (Applicant) v. Humber Memorial Hospital Association (Respondent) v. Group of Employees (Objectors).

Unit #1: "all registered and graduate nurses employed by the respondent at Weston, Ontario, in a nursing capacity, save and except head nurses, persons above the rank of head nurse and persons regularly employed for not more than twenty-four hours per week." (208 employees in the unit).

Number of names of persons on revised voters' list	187
Number of persons who cast ballots	141
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	113
Number of ballots marked against applicant	27

(BARGAINING UNIT #2 - SEE APPLICATION FOR CERTIFICATION DISMISSED - NO VOTE CONDUCTED).

7187-74-R: Milk and Bread Drivers, Dairy Employees Caterers and Allied Employees Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Christie Brown & Company Limited (Respondent) v. Bakery & Confectionery Workers, International Union of America, Local 426 (Intervener).

Unit: "all employees of the respondent at Mississauga, Ontario, save and except assistant foremen, foremen, those above the rank of foreman, office and sales staff and persons regularly employed for not more than twenty four (24) hours per week." (40 employees in the unit).

Number of names of persons on voters' list	42
Number of persons who cast ballots	41
Number of ballots marked in favour of applicant	25
Number of ballots marked in favour of intervener	16

7258-74-R: Ontario Nurses' Association (Applicant) v. Owen Sound General and Marine Hospital (Respondent) v. Group of Employees (Objectors).

Unit #2: "all registered and graduate nurses employed in a nursing capacity who are regularly employed by the respondent in Owen Sound for not more than twenty-four hours per week, save and except head nurses and persons above the rank of head nurse." (41 employees in the unit).

Number of names of persons on revised voters' list		60
Number of persons who cast ballots	36	
Number of ballots marked in favour of applicant	19	
Number of ballots marked against applicant	17	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

7295-74-R: Retail, Wholesale and Department Store Union, AFL:CIO: CLC (Applicant) v. Valley Food Marts Limited (Respondent).

Unit: "all employees of the respondent at its retail store in Chelmsford, Ontario, save and except assistant store manager, persons above the rank of assistant store manager, office and clerical staff and persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (11 employees in the unit).

Number of names of persons on voters' list		10
Number of persons who cast ballots	10	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	3	

7306-74-R: Teamsters Union, Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Genoble Distribution Limited (Respondent) v. Employee (Objector).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen and dispatchers and those above the rank of foreman and dispatcher, office staff, sales staff and persons employed for less than 24 hours a week." (39 employees in the unit).

Number of names of persons on revised voters' list		27
Number of persons who cast ballots	22	
Number of ballots marked in favour of applicant	17	
Number of ballots marked against applicant	5	



7399-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Town of Thessalon (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the Corporation of the Town of Thessalon in the District of Algoma, save and except the office staff, the foreman and persons above the rank of foreman." (11 employees in the unit).

Number of names of persons on voters' list	10
Number of persons who cast ballots	9
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	4

7405-74-R: Ontario Nurses' Association (Applicant) v. The Brantford General Hospital (Respondent) v. International Union of Operating Engineers Local 772 (Intervener) v. Group of Employees (Objectors).

Unit #1: "all registered and graduate nurses employed by the respondent engaged in a nursing capacity save and except Head Nurse, persons above the rank of Head Nurse and registered and graduate nurses regularly employed for not more than twenty-four hours per week." (163 employees in the unit). (FOR THE PURPOSE OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE CLASSIFICATIONS OF INSERVICE CO-ORDINATOR, ASSISTANT INSERVICE CO-ORDINATOR AND SENIOR HEALTH NURSE ARE EXCLUDED FROM THE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.). (FOR PURPOSES OF CLARITY, THE BOARD ALSO NOTES THE AGREEMENT OF THE PARTIES THAT SO LONG AS THE CLASSIFICATIONS OF INFECTION CONTROL OFFICER, ASSISTANT HEALTH NURSE AND DISCHARGE PLANNING OFFICER ARE OCCUPIED BY REGISTERED OR GRADUATE NURSES, THE INCUMBENTS OF SUCH CLASSIFICATIONS ARE APPROPRIATE FOR INCLUSION IN THE PROPOSED BARGAINING UNIT #1.).

Number of names of persons on revised voters' list	204
Number of persons who cast ballots	131
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	102
Number of ballots marked against applicant	28

Unit #2: "all registered and graduate nurses employed by the respondent engaged in a nursing capacity who are regularly employed for not more than twenty-four hours per week, save and except Head Nurses and those above the rank of Head Nurse, and persons already represented for collective bargaining purposes." (15 employees in the unit).

Number of names of persons on voters' list		80
Number of persons who cast ballots	15	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	8	

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING APRIL

##### No Vote Conducted

4373-73-R: United Steelworkers of America (Applicant) v. McIntyre Porcupine Mines Limited (Respondent).

Unit: "all employees of the respondent company at its property at Schumacher, Ontario, designated as shift bosses and foremen, save and except captains and persons of equal or higher rank, office and technical employees and employees covered by the subsisting collective agreement." (33 employees in the unit).

(1975) 2 OLRB M.R. - PAGE 261.

6370-74-R: Health Sciences Association of the Regional Municipality of Niagara Falls (Applicant) v. Niagara Regional Health Unit (Respondent) v. Canadian Union of Public Employees (Intervener).

Unit: "all employees of the respondent regularly employed for not more than twenty-four hours per week in The Regional Municipality of Niagara save and except Assistant Secretary Treasurer and persons above the rank of Assistant Secretary Treasurer, Junior Public Health Consultant, Senior Public Health Consultant and those covered by subsisting collective agreements." (6 employees in the unit).

(1975) 2 OLRB M.R. - PAGE 376.

7069-74-R: Federal Labour Union, No. 24762, C.L.C. (Applicant) v. Sunbeam Corporation (Canada) Limited (Respondent). (36 employees).

7186-74-R: Ontario Nurses' Association (Applicant) v. Humber Memorial Hospital Association (Respondent) v. Group of Employees (Objectors).

Unit #2: "all registered and graduate nurses employed by the respondent at Weston, Ontario, in a nursing capacity, regularly employed for not more than twenty-four hours per week, save and except head nurses, and persons above the rank of head nurse." (64 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #1 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

7193-74-R: Ontario Nurses' Association (Applicant) v. The Pines Nursing Home Limited (Respondent).

Unit #1: "all registered and graduate nurses employed in a nursing capacity by the respondent at the Pines Nursing Home, Clarkson, save and except nursing administrator and persons above the rank of nursing administrator, and persons regularly employed for not more than 24 hours per week." (2 employees in the unit).

(BARGAINING UNIT #2 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

7194-74-R: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. The Corporation of the City of London (Respondent). (32 employees).

7275-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. A. LaForest Construction Limited (Respondent). (9 employees).

7382-74-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Walkers Stores Limited (Respondent). (6 employees).

7398-74-R: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local #128 (Applicant) v. F. K. G. Steel Industries Incorporated (Respondent). (16 employees).

7419-74-R: Labourers' International Union of North America Local 527 (Applicant) v. Campeau Corporation (Respondent) v. Canadian Construction, Building Maintenance and General Workers' Union (N.C.C.L.) (Intervener).

- and -



7420-74-R: Labourers' International Union of North America Local 527 (Applicant) v. Campeau Corporation (Respondent) v. Canadian Construction, Building Maintenance and General Workers' Union (N.C.C.L.) (Intervener).

- and -

7422-74-R: Labourers' International Union of North America Local 527 (Applicant) v. Campeau Corporation (Respondent) v. Canadian Construction, Building Maintenance and General Workers' Union (N.C.C.L.) (Intervener). (22 employees).

7427-74-R: Guelph University Firefighters Union (Applicant) v. The University of Guelph (Respondent) v. The Canadian Union of Public Employees and its Local 1334 (Intervener). (8 employees).

(1975) 2 OLRB M.R. - PAGE 327.

7463-74-R: United Steelworkers of America (Applicant) v. Samuel, Son & Co. Limited (Respondent) v. Group of Employees (Objectors). (25 employees).

7494-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Val-Dal Const. Ltd. (Respondent). (8 employees).

7522-74-R: Retail Clerks International Association (Applicant) v. Freeway Ford Sales Ltd. (Respondent) v. Group of Employees (Objectors). (1 employee).

7568-74-R: International Union of Operating Engineers, Local 772 (Applicant) v. McMaster University Medical Centre (Respondent). (534 employees).

7569-74-R: Carleton University Sessional Lecturers' Association (Applicant) v. Carleton University (Respondent). (217 employees).

7571-74-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Niagara Drywall (Respondent). (30 employees).

7576-74-R: Chrysler (Windsor, Ontario) Foreman & Other Personnel Union (Applicant) v. Chrysler Canada Ltd. (Respondent). (529 employees).

0076-75-R: United Cement, Lime and Gypsum Workers International Union A.F.L., C.I.O., C.L.C. (Applicant) v. Sunshine Uniform Rentals and Reliable Linen Rentals Division of Work Wear Corporation of Canada Limited (Respondent) v. Employees (Objectors). (2 employees).

0086-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Etienne Paquin (Respondent). (7 employees).

0087-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Ranch Carpet (Respondent). (7 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

7128-74-R: Canadian Union of Operating Engineers (Applicant) v. Olympia & York Developments Limited (Respondent).

Voting Constituency: "All employees of the Respondent employed at 480 University Avenue, Toronto, save and except the Assistant Superintendent, persons about the rank of Assistant Superintendent, office staff, security guards and persons regularly employed for not more than twenty-four hours per week." (7 employees).

Number of names of persons on voters' list	7
Number of persons who cast ballots	7
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	4

7389-74-R: Retail, Wholesale and Department Store Union, AFL: CIO:CLC (Applicant) v. Sentry Department Stores Limited (Respondent).

Voting Constituency: "All employees of the respondent at its retail store in Sault Ste. Marie, Ontario, save and except Department Managers, persons above the rank of Department Manager, office staff and students employed during the school vacation period." (86 employees in the unit).

Number of names of persons on voters' list	83
Number of persons who cast ballots	75
Number of ballots marked in favour of applicant	36
Number of ballots marked against applicant	39

Certification Dismissed Subsequent to Post-Hearing Vote

7249-74-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Saunders Leasing System of Canada, Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent company at Brantford, Ontario save and except foremen, those above the rank of foreman, office and sales staff." (6 employees in the unit).

Number of names of persons on voters' list		6
Number of persons who cast ballots	6	
Number of ballots marked in favour of applicant	2	
Number of ballots marked against applicant	4	

7272-74-R: Sheet Metal Workers' International Association, Local Union #504 (Applicant) v. Berken Contractors Limited (Respondent).

Unit: "all employees of the respondent working in Sault Ste. Marie, save and except foremen, persons above the rank of foreman, office and sales staff." (15 employees in the unit).

Number of names of persons on voters' list		14
Number of persons who cast ballots	10	
Number of ballots marked in favour of applicant	5	
Number of ballots marked against applicant	5	

7336-74-R: United Steelworkers of America (Applicant) v. Truck & Tractor Equipment Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Mississauga, save and except foremen, persons above the rank of foreman, office and sales staff." (30 employees in the unit).

Number of names of persons on voters' list		29
Number of persons who cast ballots	27	
Number of ballots marked in favour of applicant	9	
Number of ballots marked against applicant	18	



7482-74-R: Fuel, Bus, Limousine, Petroleum Drivers and Allied Employees Local Union No. 352, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Indusmin Limited, Ontario Silica Operation (Respondent) v. United Cement, Lime and Gypsum Workers International Union Local 499 (Intervener).

Voting Constituency: "All employees of the respondent in the Township of Killarney, Manitoulin District, Province of Ontario, save and except foremen, persons above the rank of foremen, office and sales staff, watchmen, boat operator, and kitchen staff." (36 employees).

Number of names of persons on voters' list	36
Number of persons who cast ballots	34
Number of ballots marked in favour of applicant	5
Number of ballots marked in favour of intervener	29

#### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING APRIL

7276-74-R: Laborers International Union of North America, Local 491 (Applicant) v. A. LaForest Construction Limited (Respondent). (39 employees).

7416-74-R: Labourers International Union of North America Local 837 (Applicant) v. PILEN Construction of Canada Ltd. (Respondent). (12 employees).

7452-74-R: Labourers International Union of North America, Local 493 (Applicant) v. Carpet Guardian (Respondent). (2 employees).

7464-74-R: Labourers' International Union of North America, (Applicant) v. Walsam Investments Limited (Respondent). (5 employees).

7558-74-R: Labourers' International Union of North America, Local 506 (Applicant) v. E & M Precast Limited (Respondent). (5 employees).

7560-74-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Weston Bakeries Limited (Respondent). (34 employees).

0024-75-R: Mutuel Employees' Association, Local 528 (Applicant)  
v. The Ontario Jockey Club (Respondent). (42 employees).

0073-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Petrisan Construction Ltd. (Respondent). (2 employees).

0074-75-R: Pattern Makers Association of Toronto and Vicinity  
affiliated with Pattern Makers League of North America (Applicant)  
v. Modern Patterns Ltd. (Respondent). (20 employees).

0078-75-R: Labourers International Union of North America Local 837 (Applicant) v. D.R. Crawford Construction Limited (Respondent). (4 employees).

0093-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Shoreham Apartments & Construction Ltd. (Respondent). (3 employees).

0094-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. G. M. Gest Limited (Respondent). (10 employees).

#### APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

##### OF DURING APRIL

7110-74-R: A Group of Employees of Weston Bakeries (Applicant) v. Retail, Wholesale and Department Store Union, AFL-CIO-CLC (Respondent) v. Weston Bakeries Limited (Intervener). (GRANTED).

Unit: "all employees of Weston Bakeries Limited at Sudbury, Ontario, save and except sales supervisor, foremen, foreladies, persons above the rank of foreman or forelady, office staff, persons regularly employed for not more than twenty-four (24) hours per week, and students employed for the school vacation period." (38 employees in the unit).

Number of names of persons on voters' list		36
Number of persons who cast ballots	32	
Number of ballots marked in favour of respondent	9	
Number of ballots marked against respondent	23	

7269-74-R: Employees of the American Hotel, 189 Hunter St., West, Peterborough, Ontario members of Local 604, International Beverage Dispensers' and Bartenders' Union of the Hotel and Restaurant Employees and Bartenders International Union, A.F. of L., C.I.O., C.L.C. (Applicant) v. Hotel and Restaurant Employees and Bartenders International Union, Local 604 (Respondent) v. American Hotel (Intervener). (8 employees). (DISMISSED).

7346-74-R: Mike Belfiore (Applicant) v. Canadian Food and Allied Workers, and Local Unions 175 and 633, chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Respondent) v. Darrigo's Supermarkets Limited (Intervener). (23 employees). (GRANTED).

7367-74-R: William Beatty (Applicant) v. Canadian Union of Public Employees (Respondent). (GRANTED).

Unit: "all employees of the Corporation of the Town of Perth save and except for foremen, persons above the rank of foreman, office, clerical and technical staff." (5 employees in the unit).

Number of names of persons on voters' list		7
Number of persons who cast ballots	7	
Number of ballots marked in favour of respondent	1	
Number of ballots marked against respondent	6	

7432-74-R: Graham Wood et al (Applicant) v. Local 12-L, Graphic Arts International Union (Respondent) v. Source Data Control Ltd. (Intervener). (GRANTED).

Unit: "all lithographers, their apprentices and helpers, in the employ of Source Data Control Ltd., at Rexdale, Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (22 employees in the unit).

Number of persons on voters' list		25
Number of persons who cast ballots	24	
Number of spoiled ballots	1	
Number of ballots marked in favour of respondent	3	
Number of ballots marked against respondent	20	



0019-75-R: Francis Slade (Applicant) v. Service Employees Union, Local 204 affiliated with the S.E.I.U., AFL:CIO:CLC (Respondent). (34 employees). (DISMISSED).

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APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

APRIL

7299-74-R: Thunder Bay Lodge 1120, International Association of Machinists and Aerospace Workers (Applicant) v. Northern Engineering and Supply Company Limited Thunder Bay, Ontario (Respondent).

- and -

7300-74-R: Thunder Bay Lodge 1120, International Association of Machinists and Aerospace Workers (Applicant) v. Western Engineering Service Limited Thunder Bay, Ontario (Respondent).

- and -

7301-74-R: Thunder Bay Lodge 1120, International Association of Machinists and Aerospace Workers (Applicant) v. Dingwell's Machinery & Supply Ltd. Thunder Bay, Ontario (Respondent). (GRANTED).

7385-74-R: Christian Labour Association of Canada, Local #150 (Applicant) v. Birchwood Builders (St. Catharines) Limited (Respondent) v. Christian Labour Association of Canada (Predecessor Trade Union). (DISMISSED).

7442-74-R: Ontario Nurses' Association (Applicant) v. Toronto General Hospital (Respondent) v. Nurses' Association Toronto General Hospital (Predecessor Trade Union). (GRANTED).

7506-74-R: Ontario Nurses' Association (Applicant) v. The Board of Health of the Thunder Bay Health Unit (Respondent). (GRANTED).

7507-74-R: Ontario Nurses' Association (Applicant) v. The John Noble Home (Respondent) v. Nurses' Association John Noble Homes for the Aged (Predecessor Trade Union). (GRANTED).

7508-74-R: Ontario Nurses' Association (Applicant) v. Leamington District Memorial Hospital (Respondent). (GRANTED).

0009-75-R: Ontario Nurses' Association (Applicant) v. Plummer Memorial Public Hospital (Respondent). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF

DURING APRIL

0038-75-U: Artex Precast Limited (Applicant) v. International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 700 and Patrick Doyle and William Helfridge (Respondents). (DIRECTION).

0044-75-U: Marentette Bros. Limited (Applicant) v. Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 880 (affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America), Raymond J. Bondy and Morris Lecot (Respondents). (WITHDRAWN).

0045-75-U: Marentette Bros. Limited (Applicant) v. Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 880 (affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America) (Respondent). (WITHDRAWN).

0046-75-U: Marentette Bros. Limited (Applicant) v. Raymond J. Bondy and Morris Lecot (Respondents). (WITHDRAWN).

0082-75-U: Reed Ltd., Futorian Division (Applicant) v. Those Persons Named in Schedules "A" and "B" (Respondents). (WITHDRAWN).

0100-75-U: Caravelle Carpets Limited (Applicant) v. Jean Olive Carter et al (see attached Schedule A) (Respondents). (WITHDRAWN).

0101-75-U: Caravelle Carpets Limited (Applicant) v. Ray Calvin Brody et al (see attached Schedules A, B, C, D, E, F) (Respondents). (WITHDRAWN).

0102-75-U: Courtaulds (Canada) Limited (Applicant) v. Arthur Claude Anderson et al (see attached Schedules A, B, C, D, E) (Respondents). (WITHDRAWN).

0103-75-U: Courtaulds (Canada) Limited (Applicant) v. Fernand Roger Drouin et al (see attached Schedules A, B, C, D, E, F, G) (Respondents). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING APRIL

7262-74-U: United Brotherhood of Carpenters and Joiners of America, Local 2679 (Applicant) v. Success Display Limited (Respondent). (DISMISSED).

7315-74-U: B & D Insulation Limited (Applicant) v. John E. Ainsworth et al (Respondents). (GRANTED).

7460-74-U: Modular Architectural Components Limited (Applicant) v. Ken Archibald, et al (Respondents). (WITHDRAWN).

7546-74-U: Amalgamated Meat Cutters and Butcher Workmen of North America (Applicant) v. Hostess Food Products Ltd. (Respondent). (WITHDRAWN).

0047-75-U: Marentette Bros. Limited (Applicant) v. Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 880 (affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America) (Respondent). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF  
DURING APRIL

6106-74-U: Abe Hajjar (Complainant) v. The Becker Milk Company Limited (Respondent). (DISMISSED).

(1975) 2 OLRB M.R. - PAGE 338.

6854-74-U: Mrs. Mary Stevenson (Complainant) v. Canadian Food & Allied Workers (Respondent). (DISMISSED).

7327-74-U: Philip Vinet (Complainant) v. National Protective Service Co. Ltd. (Respondent).

- and -

7328-74-U: Daryl Merritt (Complainant) v. National Protective Service Co. Ltd. (Respondent). (TERMINATED).

(1975) 2 OLRB M.R. - PAGE 394.

7371-74-U: Charles L. Wildman (Complainant) v. Retail, Wholesale and Department Store Union, Local 414, AFL-CIO-CLC (Respondent). (DISMISSED).

(1975) 2 OLRB M.R. - PAGE 335.

7386-74-U: Teamsters Union, Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Livingston Transportation Limited (Respondent). (WITHDRAWN).



7448-74-U: Diane Levesque (Complainant) v. M. Loeb Cash and Carry and Retail Wholesale Department Store Union Local 579 (Respondents). (WITHDRAWN).

7449-74-U: Retail Clerks International Association (Complainant) v. Little Bros. (Weston) Limited (Respondent). (WITHDRAWN).

7462-74-U: Leon Godfree (Complainant) v. U.A.W. Local 127 (Eaton Unit) and Eaton Suspension Division (Respondents). (DISMISSED).

7466-74-U: Ontario Nurses' Association (Complainant) v. Sudbury Memorial Hospital (Respondent). (WITHDRAWN).

7483-74-U: Mr. Ronald George Rodgers (Complainant) v. Canadian Union of Operating Engineers, Local 101 (Respondent Trade Union) v. The Toronto Western Hospital (Intervener). (DISMISSED).

7504-74-U: United Cement, Lime and Gypsum Workers International Union, A.F.L.-C.I.O.-C.L.C. Local 539 (Complainant) v. Phil Gauthier of the Operating Engineers Local 793 (Respondent). (WITHDRAWN).

7511-74-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Belgium Standard Waste Management Limited (Respondent). (GRANTED).

7526-74-U: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Complainant) v. Modern Building Cleaning, A Division of Dustbane Enterprises Limited (Respondent). (WITHDRAWN).

7551-74-U: Herman Faria (Complainant) v. Local 1285 United Automobile Aerospace & Agricultural Workers Union of America (U.A.W.) (Respondent). (DISMISSED).

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7561-74-U: Walter Swerid (Complainant) v. Local 633 Canadian Food & Allied Workers (Respondent). (WITHDRAWN).

7567-74-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW-CLC) and Local 1967 (Complainant) v. Douglas Aircraft Company of Canada Ltd. (Respondent). (WITHDRAWN).

0003-75-U: Mrs. Catherine A. Revenberg (Complainant) v. Mr. David Baker, Personnel Director Miss Janet Brosseau, President, Nurses

Association, and Mr. Dan Anderson, Grievance Officer, Ontario Nurses Association Toronto (Respondents). (WITHDRAWN).

0011-75-U: Amalgamated Clothing Workers of America (Complainant) v. National Drapery Company Limited (Respondent). (WITHDRAWN).

0014-75-U: Canadian Union of Public Employees and its Local #1582 (Part-time) (Complainant) v. Metropolitan Toronto Library Board (Respondent). (WITHDRAWN).

0026-75-U: The Printing and Graphic Communications Union, Local No. N-1 of the International Pressmen and Graphic Communications Union (Complainant) v. The Globe and Mail Limited (Respondent). (WITHDRAWN).

0043-75-U: Marentette Bros. Limited (Complainant) v. Teamsters, Chauffeurs, Warehousemen and Helpers Union Local No. 880 (affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America) (Respondent). (WITHDRAWN).

0099-75-U: Ontario Nurses' Association (Complainant) v. St. Joseph's Hospital (Sudbury) (Respondent). (WITHDRAWN).

#### APPLICATIONS UNDER SECTION 37(3) DISPOSED OF DURING APRIL

7329-74-M: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 71 (Applicant) v. Roy Goodfellow Plumbing and Heating Ltd. (Respondent). (GRANTED).

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#### APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

7477-74-M: Nurses' Association Durham Regional Health Unit (Trade Union) v. Durham Regional Board of Health (Employer). (GRANTED).

7478-74-M: Canadian Union of Public Employees and its Local #251 (Trade Union) v. Durham Regional Board of Health (Employer). (GRANTED).

7481-74-M: The Hotels, Clubs, Restaurants, Taverns Employees Union, Local 261, Ottawa, Ontario Affiliated with AFL, CIO & C.L.C. (Trade Union) v. Mirador Motor Inn, Ottawa, Ontario (Employer). (GRANTED).

7492-74-M: Canadian Tank Lines Union (Trade Union) v. Municipal Tank Lines Limited (Employer). (GRANTED).

0005-75-M: The Canadian Union of Public Employees, Local 101 (Trade Union) v. The Corporation of the Village of Port Stanley (Employer). (GRANTED).

0063-75-M: The Canadian Union of Public Employees and its Local #1370 (Trade Union) v. Little's Nursing Home (Essex) Limited (Employer). (GRANTED).

#### APPLICATION UNDER SECTION 55 DISPOSED OF DURING APRIL

7124-74-R: The Toronto Building and Construction Trades Council, on its own behalf and on behalf of: 1. The Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227, 3233 of the United Brotherhood of Carpenters and Joiners of America 2. Labourers' International Union of North America, Ontario Provincial District Council, on behalf of Local Union 506 (Applicants) v. Inducon Construction of Canada Limited and Codeco Limited (Respondents). (DISMISSED).

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7265-74-JD: Sheafer-Townsend Limited (Complainant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 46 and International Association of Bridge, Structural and Ornamental Iron Workers, A. F. of L. Local 721 and E. Jennings, W. Trahan, D. McKenna, D. Atherton, D. Bell, J. Henderson, L. Ramsay, K. Sanderson, L. Kelly, F. Rodrigues, C. Kelly, R. Balcerczyk, F. Spagnuolo, R. Simpson, A. Melia, K. Erdmanis, D. Martin, G. Slade, A. Walker, B. Draganac, F. Heidman, J. Conrad, G. Dilella, J. Hall, T. Brathwaite, C. Pratt, I. Everingham, A. Samuel, P. Hill, H. Franc, D. Montgomery, R. Gaynes, P. Griffith, W. Ritchie, H. Bridgelal, J. Galetin, R. MacDougall, T. Boyle, J. Bird, M. Kalbfleisch, B. Tippet, F. Collins, I. Lewis, D. Deadey, P. Belyea, S. Williams, J. Ramos, E. Mohammed, J. Lussier, J. Ritchie, C. Vaughan, E. McDonald, W. Simpson, T. Smith, J. King, K. Allen, R. Cowans, R. Carrigan, W. Bird, J. Newman, O. Keane, S. Windsor (Respondents). (WITHDRAWN).



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# Monthly Report

ONTARIO LABOUR RELATIONS BOARD





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ONTARIO LABOUR RELATIONS BOARD REPORTS

A Monthly Series of Decisions from the  
Ontario Labour Relations Board

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with respect to the required majority representation would not be varied. The issuance of an accreditation certificate was accordingly ordered without an inquiry into or a final decision on any issues relating to the application of section 1(4) in the circumstances of that case.

19. In considering further the matter of the mischief against which the section is directed, it is to be noted that no allegation was made by the applicants, and certainly no evidence was offered, indicating that the companies had in any way attempted to frustrate the organization of the non-union employees. The evidence is that there has been no attempt on the part of the companies to dilute the union strength with respect to Codeco by the transfer of non-union people into that company's work force. The charge is that Inducon has refused to enter into the collective agreements with the unions. Upon the evidence adduced before the Board, it is apparent that Codeco has rigidly adhered to the provisions of its collective agreements insofar as the hiring and employment of the members of the unions are concerned. The transfer of Codeco employees into the Inducon work force can, of course, not be seen to have an adverse effect on the organizational possibilities open to the unions.

20. The inescapable inference to be drawn from all of the evidence is that the applicants have been unable, or unwilling, to organize the Inducon group of employees through the normal certification procedures and are, therefore, attempting to obtain bargaining rights through the use of section 1(4) under the guise of an unsupported allegation of a sale of a business under section 55 of the Act. The Board, however, has said that the use of its discretionary power under section 1(4) is not to be sought as a substitute for obtaining bargaining rights under normal certification procedures. The subsection may, of course, be invoked during the course of a certification application.

21. By reason of the fact that the situation before the Board is not fresh (Industrial-Mine Installations Limited, supra), further difficulties are presented with respect to the use of the discretionary powers under section 1(4). This is so because quite apart from any commercial commitments of the company that may be affected by a change in a basic labour situation which has prevailed for over six years - a point raised in argument by the respondents - there are outstanding substantial lawful interests and rights of the unorganized employees which must be respected. In regard to the latter, we might refer, parenthetically, to



the Preamble to the Act. It states that it is in the public interest to further harmonious relations between employers and employees through collective bargaining between employers and trade unions "as the freely designated representatives of the employees". The employees of Inducon, who form the overwhelming majority of the overall work force under consideration, cannot be said to have freely designated the applicants as their representatives. Indeed, on the evidence before the Board, the case is quite to the contrary. It is incumbent upon the Board to ensure that there be no trespass through the application of section 1(4) upon the free right of choice of employees with respect to who is to be their bargaining agent. On the basis of the evidence, it is plain that the Inducon group of employees form an identifiable and consistent group which is varied only by the addition from time to time of six or seven persons who are already members of one or the other of the two unions. The unorganized group of employees has always been, and remains, open for union organization in the normal way. In the meantime, the bargaining rights of the unions with respect to Codeco remain intact.

22. Having regard to all of the evidence and the foregoing reasons, the Board, in the exercise of its discretion, declines to treat the companies concerned as one employer for the purposes of the Act.

23. In view of the above decision, the Board finds it unnecessary to comment upon the point raised by the respondents with respect to the failure of the applicants to establish that a sale under section 55 of the Act had occurred or upon the question of laches.

24. The application is accordingly dismissed.

7379-74-U: Hank C. Maass (Complainant) v. Sheet Metal Workers' International Association, Local Union No. 30 (Respondent) v. CANADIAN ROGERS EASTERN LIMITED (Intervener).

- and -

7380-74-U: Hank C. Maass (Complainant) v. CANADIAN ROGERS EASTERN LIMITED (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES AT THE HEARING: P. A. Sigurdson for the complainant; J. J. Black and J. A. Donnelly for the Sheet Metal Workers' Union; D. A. Byers and D. H. Rogers for the company.

DECISION OF THE BOARD: May 6, 1975.

1. The Board directs that these complaints be consolidated and treated as one complaint.

2. This is a complaint filed under section 79 of the Act where it is alleged that the respondent trade union contrary to its duty of fair representation has refused to forward a number of the grievor's complaints through the grievance procedure to arbitration. The complaint against the respondent employer alleges that the grievor's discharge resulted from his efforts to persuade the respondent union to process these complaints. More particularly, it is alleged that the discharge was contrary to sections 58(a) and 61 of the Act in that the decision to terminate his employment was made with a view to deprive the grievor of his "right" to arbitration.

3. The circumstances surrounding the filing of this complaint are relatively simple and straightforward. The respondent employer is engaged in the sheet metal manufacturing business. The respondent's business includes but is not necessarily restricted to performing roofing, ventilation, custom fabrication and architectural metal work. The respondent trade union and the respondent employer are parties to separate collective agreements covering a production unit and construction unit of employees respectively. The grievor at all material times was employed as "a lay out man" and was represented for collective bargaining purposes under the terms of the production unit agreement.

4. The grievor's difficulties arose as a result of the employer's decision to assign the lay out work for a certain "Australian Project" to a member of the construction unit. The respondent was successful in being retained to undertake the custom fabrication work for a bank project in Melbourne Australia. One reason for being awarded this contract was attributed to the reputation acquired by the respondent for its work on "The Commerce Court Project" in Metropolitan Toronto. A sample offering of the respondent's work was prepared in February, 1974, on instruction from the Australian Contractor. As a result the respondent was invited to tender for and was ultimately awarded the contract for the entire project. In June 1974, work on the project commenced in

earnest. At this time a lay out man covered under the terms of the construction unit agreement was assigned to the project and presumably was paid in accordance with the rate under that agreement. This assignment provoked unrest amongst the production unit employees in that production work was being performed by a construction unit employee at a substantial increase in pay. Mr. Maass in discharging his role as shop steward for the production unit employees initiated a petition expressing their objection to the work assignment. The petition was presented to the employer for its consideration. In addition grievances alleging discriminatory activity by the respondent employer were prepared under the grievor's advice and instruction. The grievor did not submit the production unit grievances for processing; but, instead, he submitted his own grievance as representative of the complaints of his colleagues.

5. The matter of the grievor's complaint proceeded to the first stage under the grievance procedure contained in the collective agreement between the parties. A meeting was arranged between representatives of the respondents. Mr. Black, the business manager instructed Mr. John A. Donnelly to attend the meeting because of his expertise in settling jurisdictional issues of the type described herein. Mr. Donnelly indicated that he has been engaged in the sheet metal trade for the past 33 years and was held the post of business agent for the respondent local for the past 15 years. He was responsible for negotiating the two agreements with the respondent and has participated in their administration. Accordingly, he attended the meeting and advised that he found nothing objectionable in the respondent's work assignment and therefore concluded there was no merit in the grievor's complaint. The chief steward, Mr. Weir agreed with the result and the grievor expressed a dissident view.

6. In September, 1974, the grievor was involved in a domestic mishap and was compelled to take a month off work. Upon his return in October, he was assigned to perform "the fitting function" on the Australian project. The grievor refused and was suspended for insubordination. Upon expiry of his suspension he refused the work assignment a second time and was given a longer suspension. Each suspension resulted in a grievance filed under the terms of the collective agreement that was denied by the respondent employer. The respondent trade union found no merit in forwarding the grievances beyond this stage and indicated the same to the grievor. Indeed, the grievor admitted that he made a mistake by not complying with the employer's directives and afterwards dispute the assignments. Mr. Maass indicated however that his refusals



were motivated by his concern as shop steward in not disappointing the other production unit employees who looked to him for leadership. The respondent trade union expressed confidence in its position in connection with the suspension grievances in that it offered to help the grievor file a duty of fair representation complaint with the Board. The undertaking was made that should the Board find in the grievor's favour the respondent would indeed fight his grievance to arbitration. A complaint was subsequently filed with the Board and later withdrawn.

7. At approximately the same time in October, 1974, Mr. John Carey a welder employed by the respondent under the terms of the production unit agreement refused a work assignment on "the Australian Project". He refused the direction because of the alleged discriminatory activities of the employer in assigning production work to an employee under the construction unit agreement. Mr. Carey did not grieve the subsequent suspension because it was explained to him that the company had heretofore had a past practice of "mixing crews" on certain projects and there was no justification for challenging the employer's decision. Mr. D. Rogers president and owner of the respondent's undertaking testified that his company has had a collective bargaining relationship with the respondent trade union for the construction unit since 1925 and for the production unit since 1947. As far as he was concerned the company had a past practice of mixing crews on projects that required tradesmen of varying skills. The "Commerce Court Project" was specifically adverted to as an example of a recently completed job where crews from both units worked alongside of each other. Mr. Donnelly, the respondent's jurisdictional expert agreed with Mr. Rogers position.

8. Mr. Maass after serving his second suspension capitulated and complied with "the fitting assignment" on the Australian Project at his normal pay rate. In this regard, Mr. Maass as "a lay out man" occupied the highest pay category under the terms of the production unit agreement. The evidence indicated that "fitting work" necessitated the lifting and moving of heavy metal materials. The evidence also established that the duties of a "lay out man" also required the lifting of materials but not on the same frequency as required by the fitter in assembling the parts to a particular piece of a project. Mr. Maass stated that in performing lay out work he often asked a member of the production unit to help him lift and carry materials to and from other departments. In the course of performing his fitting duties Mr. Maass

aggravated a recurring back ailment attributed to the lifting of heavy materials. Mr. Maass explained that had he been assigned to his regular duties as a lay out man he would not have incurred these difficulties. Mr. Rogers stated that Mr. Maass was assigned to do fitting work because upon his return after a month's absence from work there was simply no lay out work available for assignment. Indeed, employees less senior than Mr. Maass in service had been assigned lay out work during his absence. Nevertheless, it was in keeping with trade practice to permit the lay out function to be completed by the same tradesman that commenced the job. In other words, the company was not prepared to permit Mr. Maass to interrupt a lay out job that had already been started by another employee.

9. At the commencement of the morning shift on November 11, 1974, the grievor gave the plant manager a doctor's note dated November 4, 1974 indicating that the grievor had complained that "his back is again painful." The doctor advised that his patient suffered from back strain and disc problems and recommended that the grievor "should avoid bending and heavy lifting". Later that day he was send home on a normal lay-off. He returned to work a week later and was presented with a letter dated November 18, 1974 under the signature of Mr. Peterson, the plant manager, stating that the respondent employer would require a doctor's certificate indicating an improvement in his condition to the extent that it "no longer presents a hazard to your health while working under the conditions to be found in our shop which include bending and lifting". The grievor was also granted an enforced three week leave of absence.

10. The grievor reacted by filing a grievance challenging the company's right to assess his physical capacity to discharge his duties. He asked that he be reinstated and compensated for the amount in wages lost. Attached to the grievance form was a letter attributing his back problems to the company and threatening to commence a law suit for the sum of \$50,000 in damages. Underlying this particular grievance if not pervading this entire episode, was the grievor's complaint that he was a properly qualified "lay out man" equipped with the necessary skills to perform those duties. He strenuously objected to being assigned to perform "fitting" work, that in his opinion, was the cause of his difficulties with the employer. In due course the grievance was denied by the company. The employer also denied as untrue the grievor's accusations with respect to his back ailments and would challenge them in court. The grievor thereupon presented

this grievance to representatives of the respondent trade union for further processing through the grievance procedure. Mr. Black indicated to Mr. Maass that he was beyond his depth and would seek the advice of a representative of The Ontario Federation of Labour. The respondent union was advised that because the grievor had threatened legal action against the company, "the grievor had locked the door" in connection with the processing of his grievance. No further elaboration of this reason was given.

11. On December 10, 1974, the grievor appeared at work without the doctor's certificate requested by the company in its letter of November 18, 1974. A second enforced leave of absence was imposed upon the grievor by letter dated December 10, 1974 under the President's signature. Mr. Rogers stated that the leave of absence was not to exceed four weeks. If the grievor at that time could not present the required medical evidence, "we will assume you are terminating employment". At the expiry of the four weeks the grievor reattended the respondent's premises without the necessary medical clearance. On January 8, 1975, Mr. Rogers advised that because the grievor's physical condition remained unchanged "this company considers your employment terminated."

12. Mr. Rogers stated that he has been associated with the respondent as a tradesmen and executive officer for the past forty years. He also indicated that he has served his apprenticeship in the sheet metal trade and is a trained journeyman. He attested that in the respondent's operation there is not a job function that does not require some bending and some lifting. He agreed in cross-examination that lay out work would require less lifting and moving of materials than other work. He denied categorically however any suggestion that Mr. Maass while performing the lay out function would not be required to do bending and lifting. Mr. Maass's evidence is ambivalent on that particular issue. We note nonetheless that in his examination in chief he admitted that he was required from time to time to secure the help of a fitter to lift materials or to carry them to another department. Mr. Rogers also stated that the company would be putting itself in a hazardous position in assigning Mr. Maass any work in the factory in the face of a doctor's note advising against the lifting of heavy materials. In this regard, the Board was advised by the grievor that at all material times, Mr. Maass was involved in proceedings in connection with claims before The Workmen's Compensation Board.



13. On January 13, 1975, a discharge grievance was filed by Mr. Maass and denied by Mr. Peterson on behalf of the respondent employer. Mr. Maass reported the launching of this particular grievance to Mr. Black. After he received the company's reply on January 17, 1975, reaffirming its position, the grievor never contacted the respondent trade union. The grievor indicated that although he held the position of shop steward he was relatively inexperienced in the processing of grievances. He could recall only one other grievance other than his own that he was responsible for sponsoring. He did agree however that the respondent trade union was successful in removing "a black mark" against him in connection with a complaint he had filed over a certain painting incident. The Board however having regard to Mr. Maass's participation in the numerous grievances described herein, is constrained to conclude that the grievor was anything less than a neophyte in his dealings with the procedures provided under the terms of the collective agreement for seeking remedial satisfaction. In light of the foregoing the Board can only infer that the grievor was disposed not to pursue this particular complaint with the same vigour as the other complaints heretofore described. This would also explain the absence of a committee meeting of plant stewards that normally preceded the processing of a grievance to the next stage of the grievance procedure.

14. On the basis of the evidence adduced before us we can find no justification in fact or in law for filing a complaint alleging employer wrongdoing pursuant to sections 58(a) and 61 of The Labour Relations Act. The "right" to full access to the grievance and arbitration process is not a "right" contemplated under the unfair labour practice provisions of the Act. Arbitration is an obligation statutorily imposed on the parties to a collective agreement by section 37(1) of the Act. Employees covered under the terms of the agreement are bound by section 42 of the Act to abide by the terms of the arbitration remedy and the antecedent procedures negotiated by the employer and the trade union as their exclusive bargaining agent. Whatever "rights" to relief that are available to an aggrieved employee in connection with alleged employer infractions of the agreement are governed by the terms cited in the collective agreement and not pursuant to the unfair labour practice provision of The Labour Relations Act. In this regard, the Board agrees with the representative of the respondent employer that the Board's normal practice is to require complaints of the type recited herein to be processed in accordance with the remedies provided under the collective agreement. Furthermore, we would not permit the processing of a complaint under section 79 of the Act to be applied in the nature of an appeal from

that process once exhausted. The complaint filed against the respondent employer is therefore dismissed. (See; The CSAO Inc. Case OLRB M.R. December 1972, 1016).

15. In addressing ourselves to the facts adduced in support of the allegation that the respondent trade union was in violation of its duty of fair representation we are almost reluctantly driven to the conclusion that the grievor was very much the author of his own misfortune. We are satisfied that at all material times there was a past practice of "mixing crews" for the purpose of completing particular employer projects. The grievor would not accept the rulings of his superiors in the trade union hierarchy or the directives of his employer to comply with that practice. The grievor admitted in retrospect that his failure to comply with these directions was unwarranted and expressed regret that he did not comply and grieve at a later date. Nevertheless it also appears that Mr. Maass' judgement was blurred by his responsibilities as shop steward in championing the production employees' cause. The Board is satisfied that the grievor aggravated a recurring back ailment while assigned to the Australian Project. We cannot conclude however (nor are we required to) that these same problems would not have occurred had he continued to perform his normal lay out functions. In any event, we are not prepared on the evidence before us to attribute the basis of the respondent's refusal to perform the fitting duties to his physical condition. For example, we note the covering letter to the employer in "the enforced leave of absence grievance" that the grievor continued to express objection to being denied assignment to do lay out work. Much of the grievor's difficulties appear to the Board to have stemmed from his failure to accept the finality of the respondent's entrenched practice of assigning construction unit employees the functions that allegedly could be performed by production unit employees.

16. The Board is satisfied that the basis for the grievor's complaint against the respondent trade union is addressed more towards the adequacy of union representation as opposed to bad faith representation. We hold it preposterous that a union business manager would invite and, indeed, sponsor a duty of fair representation complaint as a condition precedent to reviewing a legitimate decision to forego further processing of a grievance determined in good faith to be without merit. The Board wishes it to be crystal clear that Section 60 was not designed to be applied by trade unions as an outlet for evading responsibility for making hard decisions. The union's response to the grievor's leave of

absence grievance was equally bewildering. No explanation was forwarded by the representatives of the respondent union as to why the threat of a law suit (however imprudent) should impede the forwarding of an otherwise legitimate grievance. Had we been able to conclude that this advice was given with the expressed purpose of frustrating the grievance the Board would have some basis for characterizing the respondent's conduct as arbitrary or in bad faith. But the evidence as adduced through Mr. Maass establishes that Mr. Black admitted to being out of his depth in dealing with the grievor's complaint. He therefore sought the advice of a consultant and relied upon the information acquired in resolving not to process that particular complaint. The Board is satisfied that the respondent appears to have exhibited a propensity for seeking the aid of third parties in arriving at or reinforcing decisions pertaining to representation problems. This approach may very well have limited the grievor's access to the full thrust of the grievance procedure but certainly cannot support a finding of arbitrary, discriminatory or bad faith representation.

17. The Board has not overlooked the obvious potential for a conflict of loyalties in the circumstances described herein where one bargaining agent is the representative of two categories of employees under separate collective agreements. We are convinced that jurisdictional jealousies are inevitable where work assignments are susceptible to competing claims. We are satisfied however that the respondent's decision upholding the employer's work assignment to the construction unit employee was arrived at in good faith and without intent to prejudice members of the production unit.

18. Finally, the Board has heretofore suggested that the evidence does not support a finding that the respondent treated the grievor's discharge grievance in a perfunctory or superficial manner. In light of the grievor's failure to pursue that complaint we conclude that the respondent was simply denied the opportunity to consider the merits of processing it to the next stage of the grievance procedure. We are not empowered in disposing of complaints of this nature to speculate on how the respondent would have treated a more aggressive approach by Mr. Maass in insisting that this grievance be processed. In allegations of this nature the Board is only required to review the failings of a respondent and not the shortcomings of a complainant in attributing wrongdoings pursuant to an unfair practice complaint. In the circumstances described herein, the complaint filed against the respondent trade union is dismissed.



7489-74-R: Sheet Metal Workers' International Association,  
Local Union #47 (Applicant) v. L. A. GRAVES BUILDING SERVICES  
LIMITED (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members  
H.J.F. Ade and E. Boyer.

DECISION OF THE BOARD: May 8, 1975.

1. This is an application for reconsideration of the Board's decision dated March 27, 1975, certifying the applicant trade union for a group of the respondent's employees engaged in roofing work in The Ottawa-Carleton area. The respondent in support of its application refers specifically to its Reply to Application for Certification, Construction Industry (Form 55) dated March 24, 1975, which reads as follows:

"...Our subject employees are Francophones  
and it be necessary to have french  
publications of form 52."

2. At the time the reply reached the Board The Notice to Employees of Application for Certification, Construction Industry (Form 52) had heretofore been posted on the employer's premises. A duly executed Return of Posting Before The Ontario Labour Relations Board under the signature of the respondent's President and dated March 21, 1975, indicates that three copies were posted. At no material time before or after the issuance by the Board of its certificate granting bargaining rights did we receive an objection from an employee in the proposed bargaining unit indicating a failure to comprehend the intent and nature of the proceedings. In this regard, twelve application for membership cards were filed in support of the application. These cards were printed in English and completed without apparent difficulty. There was also filed a duly executed Declaration Concerning Membership Documents, Construction Industry (Form 54) dated March 21st, 1975, indicating that there were no difficulties with respect to the card transactions. The respondent filed schedules in its reply indicating that eleven employees were members of the proposed unit as of the date of the application. Of these eleven employees eight had indicated a desire to be represented by the applicant trade union.

3. In accordance with the Board's practice and procedure in dealing with applications for certification under the construction industry provisions of the Act, the Board proceeded to issue a certificate without requiring a hearing.

(See; The Alcan-Colony Case OLRB M.R. June 1963, 159; Trio Carpenters (Contractors) OLRB M.R. December 1962, 333).  
In response thereto the respondent by letter dated April 16, 1975 indicated as follows:

"On behalf of the Respondent L. A. Graves Building Services Limited, we would request that the Ontario Labour Relations Board reconsider its decision of March 27th, 1975 pursuant to Section 95 (1) of the Labour Relations Act.

In paragraph 13 of the Respondent's reply to Application for Certification, Construction Industry, the Respondent states "our subject employees are Francophones and it (will) be necessary to have french publication of form 52". Notwithstanding this request, the forms provided by the Board and published were in English only. Further, it would appear that the fact that the notices posted were in English only was not brought to the attention of the Board prior to their decision of March 27th, 1975. The members of the bargaining unit are all French-speaking and unable to speak the English language.

Therefore, the Respondent requests that the Board reconsider its decision pursuant to Section 95(1) and order a representation vote pursuant to Section 7(1) of the Labour Relations Act."

(emphasis added)

4. Upon receipt of the respondent's application for reconsideration a copy was sent in the ordinary course to the applicant for its comment. By letter dated April 24, 1975 the applicant replied to the respondent's allegations as follows:

"In reply to letters received on behalf of L. A. Graves by their Solicitor, Mr. James B. Chadwick, dated April 16, 1975, these are the pertinent facts.

After receiving our certificate of Certification from the Board, we contacted Mr. Graves with the desire to bargain to form a Collective Agreement. On April 9, 1975, Mr. Raymond Guertin, Business Manager, and Robert Belleville met Mr.

Graves and proceeded to effect a Collective Agreement. Mr. Graves stated that he would need a few days to think things over before agreeing to sign. To this end, Mr. Graves stated he would contact the Union with his decision.

On Monday, April 14, 1975, Mr. Graves contacted Mr. Guertin to inform him that the company had no desire to continue bargaining and that they were not prepared to form a Collective Agreement.

At this point, Local #47 had no other recourse but to apply for a Conciliator. Local #47 takes great objection to L.A. Graves' Solicitor's inference that all of the employers are Franco-phones and are ignorant of the English language.

Firstly, the facts don't bare out the solicitor's accusation that all of the employers are Francophones. Oswin Lohe cannot speak a word of French.

Secondly, while the vast majority of the employers are Franco-Ontarians, born and educated in a bilingual Ottawa and vicinity, the claim that they don't have a working understanding of the English language is without foundation.

Thirdly, the whole language issue put forward on behalf of the Company is completely out of perspective as their Superintendent, Mr. Ron Jones conveys all his directions in the English language, because to the best of our knowledge, he only speaks English.

In summarizing, Local #47 feels that it has acted in the true spirit of the Labour Relations Act, having won the right to act as the bargaining agent on behalf of the employees of L. A. Graves and having made every endeavour to effect a settlement, is now faced with the proposition of applying for conciliation service to try and effect an Agreement."

5. In the interim, the Board dispatched an Examiner to conduct an inquiry of employees in the bargaining unit



who had indicated by their membership cards a desire to be members of the applicant trade union. The Examiner was instructed to restrict his inquiry to only a sampling of these employees. He approached these persons at their homes and conducted his interview. Each was shown a copy of Form 52 and asked if he understood its contents. The results of the Examiner's inquiry indicated that no person interviewed experienced difficulty communicating in English and each expressed complete understanding of the Form.

6. As a result the Board is disposed to deny the respondent's request for reconsideration of its decision. Should the respondent disagree with this disposition of its application the Board requests that it contact the Registrar within ten days of the date hereof.

0156-75-R: Canadian Workers Union (Applicant) v. FRANKEL STRUCTURAL STEEL LIMITED (Respondent) v. Shopmen's Local Union No. 743 of the International Association of Bridge Structural and Ornamental Iron Workers (Intervener #1) v. Teamsters Union Local 938 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Intervener #2) v. Group of Employees (Objectors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members  
F. W. Murray and P. J. O'Keeffe.

APPEARANCES AT THE HEARING: G. Miller for the applicant; E. L. Stringer, Q.C., and W. G. Harrison for the respondent; J. Sack, H. Goldblatt and G. J. Zaba for intervener #1; I. J. Thomson for intervener #2; H. Abendroth and G. Feher for the objectors.

DECISION OF VICE-CHAIRMAN D.H. KATES AND BOARD MEMBER F.W. MURRAY:  
May 15, 1975.

1. The name: "Frankel Structural Steel Ltd." appearing in the style of cause of this application as the name of the respondent is amended to read: "Frankel Structural Steel Limited".

2. The Board finds that the applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act.

3. The Board notes that intervener #1 filed a document dated April 15, 1973 that purports to be a collective agreement between it and the respondent covering the period between April 15, 1973 and April 26, 1975 and affecting employees who are the subject of the instant application.

4. Having regard to the agreement of the parties, the Board finds that all employees of the respondent at its shop on Shaw Street in the Municipality of Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office, sales and clerical staff, security guards and employees covered by subsisting collective agreements, constitute a unit of employees of the respondent appropriate for collective bargaining.

5. At the outset of the hearing counsel for the applicant deposited before the Board a document dated May 12, 1975, containing allegations of improprieties filed against both the intervener trade union and the respondent employer allegedly committed during the course of the applicant's efforts to organize the respondent's employees. At that time copies of these allegations were also given counsel representing the respondent and intervener #1. The applicant submitted that these allegations, if proven, affected the climate under which the true and voluntary wishes of employees could be reflected should a representation vote be directed by the Board. Or, to put it more strongly it was submitted that in light of these improprieties a free, voluntary vote would be unlikely. The applicant also argued that the issues raised in its allegations not only went to the likelihood of a free vote but also affected intervener #1's status to appear on the ballot of any vote that may be directed. It was therefore submitted that the Board adjourn the proceedings and permit counsel to subpoena the witnesses necessary to adduce evidence in support of the allegations.

6. Counsel for both intervener #1 and the respondent argued that the charges were untimely and filed with a view to interrupting the negotiations that were being conducted between intervener #1 and the respondent for the purpose of entering into a collective agreement. It was therefore submitted that the charges should be dismissed and the vote be directed in the normal course. Alternatively, counsel argued that the request for an adjournment be denied and that the applicant immediately be put to the task of adducing evidence in support of its allegations. Should either the respondent or intervener #1 "be caught by surprise" or prejudiced by the evidence adduced, then, a motion for an adjournment would be made at that time.

7. Herman Abendroth, a representative for the group of employees, submitted that the applicant's charges were filed with the intention of obstructing the negotiations being conducted between the respondent and intervener #1 and that if a vote need be held it be directed immediately and that the ballots be counted thereafter.

8. The Board upon request of the parties undertook to commit to writing the oral decision given at the hearing. We therefore find;

- (i) that the allegations of impropriety filed with respect to the conduct of intervener #1 and the respondent as they pertained to the events that occurred at all material times before and after the filing of the instant application are timely in accordance with the meaning of Section 47 of The Board's Rules on Practice and Procedure;
- (ii) that since the allegations pertained to wrongdoings committed with respect to the likely outcome of a representation vote, the Board in accordance with its practice directed that the vote be held and that the ballot box be sealed thereafter; and
- (iii) that evidence in support of the applicant's allegations be entertained at the earliest possible moment after the representation vote has been taken.

9. The Board is satisfied on the basis of all the evidence before it that not less than thirty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on May 6, 1975, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

10. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between



the date hereof and the date the vote is taken will be eligible to vote.

11. Voters will be given a choice between the applicant and intervener #1.

12. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: May 15, 1975.

I concur with the decision of my colleagues with respect to the future disposition of these proceedings. I would have departed from the position of the majority however and directed the tabulation of the results of the balloting immediately after the representation vote was completed.

7390-74-R: Canadian Workers Union (Applicant) v. CANRON LTD., EASTERN STRUCTURAL DIVISION (Respondent) v. Shopmen's Local Union No. 743 of the International Association of Bridge, Structural and Ornamental Iron Workers (Intervener).

BEFORE: Frank V. Boscarion, Vice-Chairman, and Board Members J.E.C. Robinson, Q.C., and P. J. O'Keefe.

APPEARANCES AT THE HEARING: G. C. Miller and G. O'Brien for the applicant; E. T. McDermott and S. Eccles for the respondent; J. Sack and F. Knutsen for the intervener; Norman A. Endicott on behalf of the witnesses Carolyn Perly and Gregory Keilty; Gary Perly on behalf of himself.

DECISION OF THE BOARD: May 16, 1975.

1. Pursuant to the decision of the Board dated March 4, 1975, Mr. L. Stickland Labour Relations Officer, convened a meeting of the parties which culminated in the Pre-Hearing Vote Meeting Report dated March 13, 1975. There is no question concerning the timeliness of this displacement application in these proceedings, having regard to the provisions of Section 26 of the Collective Agreement entered into between the respondent and the intervener trade union.

2. By letter dated March 13, 1975, Mr. Sack, counsel for the intervener informed the Board as follows:

"The intervener submits that the applicant is not entitled to a prehearing vote on the following grounds:

- (a) the applicant is not a bona fide trade union within the meaning of The Labour Relations Act, but is in fact an arm of the Canadian Liberation Movement, a quasi-political organization;
- (b) the membership evidence submitted by the applicant cannot be relied upon insofar as it was obtained on the basis of misleading and false statements made to the employees regarding the intervener and others, e.g. allegations of lying, stealing, cheating, etc. made against the intervener and allegations of bias made against the Ontario Labour Relations Board;
- (c) the membership evidence submitted by the applicant is invalid insofar as it contravenes article III, clause 3, of the applicant's constitution.

In connection with the ground last-mentioned, the applicant's constitution provides in article III, clause 3, as follows:

"A prospective member may join as a headquarters members of the National Union where no appropriate local union has been chartered. Such members shall join an appropriate local union where one has been chartered."

In fact, a local union was established by the applicant for the employees at Canron Limited, Eastern Structural Division. Accordingly, the employees of Canron were not eligible under the applicant's constitution to become members of the National Union, but only of the local union at Canron.

The intervener submits that, for the foregoing reasons, the Board should decline the applicant's request for a pre-hearing vote and hold a hearing into the above matters."

3. Pursuant to the decision of the Board dated March 17, 1975, the Board nevertheless directed that a pre-hearing representation vote be held in this matter and the

majority of the Board (Mr. O'Keeffe dissenting) further ordered that the ballot box containing all the ballots cast in the pre-hearing vote be sealed and the ballots not counted pending the further direction of the Board. By letter dated March 18, 1975, the Registrar advised the parties that this vote would be conducted on April 11, 1975 and the matter was subsequently listed for hearing on April 24, 1975.

4. By letter dated March 20, 1975, Mr. Miller, counsel for the applicant, advised as follows:

"Thank you for your letter of March 18, 1975, addressed to the Canadian Workers Union. As of this date we have no information that would warrant the sealing of the ballot boxes nor do we have any information that would obviate a counting of ballots.

If any of the parties has information that would warrant such a decision, then it is my respectful suggestion that those complaints ought to be laid forthwith.

It is my understanding of the Board's practice that all such complaints must be timely and made at the earliest possible time after notice to the party. It is not the Board's position to co-operate in delays or permit hunting expeditions. I would ask that the Board reconsider its decision with respect to this matter, or in the alternative, advise the parties that any complaints made after this date, for matters arising prior to the date of the decision, will be considered by the Board to be untimely."

5. By letter dated March 20, 1975, Mr. Sack further advised the Board as follows:

"Since our previous letter to the Board it has come to our attention that the applicant established its status as a trade union in a case involving NC Press Ltd., Board File No. 6380-74-R. A copy of the decision of the Board dated September 26, 1974, is enclosed.



We understand that NC Press Ltd. is the press arm of the Canadian Liberation Movement. We further understand that the Canadian Workers Union is the union arm of the Canadian Liberation Movement. Accordingly, it would appear that, in the first case in which the applicant established its status, the same party appeared on both sides.

On the basis of the above, the intervener requests the Board to reconsider its decision ordering a pre-hearing vote and to inquire anew into the status of the applicant."

6. By letter dated March 25, 1975, Mr. McDermott, counsel for the respondent advised the Board as follows:

"We acknowledge receipt of a copy of your letter of March 24, 1975 addressed to Canon Limited enclosing a copy of the letter from Mr. Miller.

We wish to advise that at the hearing of this matter, we will ask the Board to require that the Applicant prove its status as a trade union within the meaning of the Labour Relations Act. It is the position of the company that the Applicant is not entitled to rely upon previous certificates issued in proving its status in that the Applicant obtained its initial certificate before the Labour Relations Board for N.C. Press Limited in circumstances which amount to fraud and we will be asking the Board to make a declaration to that effect pursuant to the provisions of Section 50 of the Labour Relations Act. It will be our submission that the directors and officers of N.C. Press Limited namely, Caroline Perly, Gregory Kielty, Judith Haiven and Wesley Thompson have a direct relationship with the Applicant or members thereof and have supported the Applicant in its organizational efforts. It will therefore be our position that the Applicant has not previously established its status as a trade union under the provisions of the Labour Relations Act.

In view of this position, we wish it to be noted that we object to the order providing for a pre-hearing vote as Section 8(1) of the Labour Relations Act provides that only a "trade union" may request that a pre-hearing representation vote be taken.

It is our position that until such time as the Applicant has established its status as a trade union it cannot request and the Board may not order a pre-hearing representation vote. In light of this position, we would ask the Board to reconsider its decision to order a pre-hearing representation vote.

We take issue with the statement in Mr. Miller's letter of March 20, 1975 that the parties be prohibited from raising any complaints after the date of his letter. Under the provisions of the Rules of Procedure, where a person intends to allege improper or irregular conduct at a hearing, it is to be done promptly upon discovering the alleged improper or irregular conduct. Should additional facts come to our attention which would establish further improper conduct by any of the parties to this proceeding, the purpose and intent of the Rules is that we should be entitled to rely on such facts at the hearing provided we file a Notice of Intention promptly upon discovering such facts. The governing factor is when these facts came to our attention not when the facts occurred and we would accordingly suggest that the Board not give any consideration to Mr. Miller's submission in this respect.

We also wish to advise that at the hearing and in the event the Board finds that the Applicant has status, we will ask the Board to examine the evidence of membership filed in support of the application. In the event the membership application forms are for the Canadian Workers Union, we would submit that under the constitution of that organization, prospective members are prohibited from making application to the Canadian Workers Union where a local union exists. A local union has been chartered for Canon Limited."

7. By letter dated March 27, 1975, Mr. McDermott further advised as follows:

"We acknowledge receipt of your letter of March 25th and March 26th, 1975, both of which arrived this day.

As indicated in our letter of March 25, 1975, and the letter of Mr. Sack dated March 20, 1975, both the respondent and the intervener are taking the position that the applicant has not previously established its status as a trade union. We therefore wish to reiterate our submission that the Board reconsider its decision ordering a pre-hearing vote and that the Board inquire into the status of the applicant prior to the holding of such a vote. In point of fact, it is our position that the Board does not have jurisdiction to order a pre-hearing vote until the applicant has established its status.

We would also request that the hearing scheduled for April 24, 1975, be expanded to include the matters raised in our letter of March 25, 1975 and that notice be given to the parties accordingly."

8. By letter dated April 7, 1975, Mr. Miller responded to the Board as follows:

"I have your several letters with enclosures.

There seems to be three matters raised. One in relationship to Board recognition and N.C. Press Limited. Although there is an allegation of "fraud" upon the Board there are no facts alleged from which any inference of fraud might be drawn.

The second allegation is with respect to a local union which "has been chartered for Canron Limited".

And thirdly, the failure to count ballots.

As of this date it is my respective submission that no allegations have been made which would justify a delay in the counting of the ballots, and I would repeat my request that the Board re-consider its decision in that regard.

No local union has been chartered by the Canadian Workers Union at Canron Limited, or at all.



I direct the Board's attention to a certification with respect to Burlington Golf and Country Club - Board file No. 6418-74-R

I note from the letter of Osler, Hosken & Harcourt of March 25th, a submission with respect to timeliness which statement I adopt and I would hope that the Board will hold the Respondent and Intervener to the Rules."

9. On April 11, 1975, the pre-hearing representation vote proceeded in the manner as set out in Paragraph #3 herein. By letter dated April 16, 1975, Mr. McDermott further advised the Registrar as follows:

"We acknowledge receipt of a copy of your letter of April 12, 1975 addressed to the Company and enclosing Form 45.

While we have no representations to make in connection with the conduct of the vote, we intend to make representations in connection with the Application as set out in our previous correspondence to the Board. The hearing for these representations has been set for April 24, 1975."

10. By letter dated April 17, 1975, Mr. Sack then advised the Board as follows:

"This letter is to give notice that the intervener intends to adduce evidence at the hearing of this matter that the applicant has intimidated employees contrary to The Ontario Labour Relations Act. In particular, Gary Perly, Tom Conlan and Claude Brown have told employees that, if they did not become or continue to be members of the applicant, they would lose their jobs. One instance of this occurred at the home of Gino De Santis, 50 Arlington Avenue, Toronto."

11. By letter dated April 18, 1975, Mr. Miller advised the Registrar accordingly:

"Further to the letter to you of April 17th, 1975, from Sack, Dunn & Paisley, in regard to the above matter, if the Intervener intends to adduce evidence, we would ask that you give us the usual particulars which would include all times and places."

12. Mr. McDermott by letter dated April 21, 1975, in expanding upon his letter as set out in Paragraph #9 herein, stated as follows:

"Further to our letter of April 16, 1975, we wish to clarify our position in connection with the report on the vote. As stated in that letter, we have no objections to the manner in which the vote was conducted. As we have previously outlined in our several letters, we do intend to make representations to the Board that a pre-hearing vote should not have been ordered in the first instance as it is the position of the Company that the Board does not have jurisdiction to do so. Our letter of April 16, 1975, should not, therefore, be considered to be an acknowledgment by the Company that the pre-hearing vote was validly held."

13. At the commencement of the hearing in this matter on April 24, 1975, Mr. Norman Endicott, counsel, alleged on behalf of his clients Caroline Perly and Gregory Kielty that these two persons had been improperly subpoenaed by the respondent and the intervener in these proceedings. The names of these two witnesses appear in the correspondence as initially filed by Mr. McDermott (See Paragraph #6) wherein it is submitted that these two persons are officers and directors of N.C. Press Ltd. (In this regard, see also Mr. Sack's letter as set out in Paragraph #5 herein). Upon advising the Board that he was instructing his clients in the circumstances to withdraw from these proceedings, Mr. Endicott then tendered to the Chairman the conduct money and the subpoenas issued in connection with his clients, whereupon they left the hearing room in the company of their counsel.

14. Upon hearing the representations of the parties, the Board granted an adjournment of these proceedings in order to permit the respondent, in the circumstances as more fully set out below, to bring an application before the Court, pursuant to the provisions of The Statutory Powers Procedure Act.

15. During the course of the hearing, the Board entertained further representations. The first issue raised in this respect concerns the status of Mr. Gary Perly, a witness subpoenaed by both the respondent and the intervener to give testimony in these proceedings. In this regard, the provisions of Section 11(1) of The Statutory Powers Procedure Act were drawn to the attention of Mr. Perly at the hearing, which provides as follows:

"A witness at a hearing is entitled to be advised by his counsel or agent as to his rights but such counsel or agent may take no other part in the hearing without leave of the tribunal."

Having carefully reviewed the representations as adduced before us, the Board concludes in the particular circumstances of this case, and subject to what protection may be afforded to him under the relevant legislation, that Mr. Perly in his capacity as a subpoenaed witness in these proceedings, has no status to make submissions concerning the matters in issue between the parties.

16. The question of the sufficiency of particulars was also raised during the course of the hearing in this matter on April 24, 1975. In this respect, Mr. Miller submitted that he had requested particulars in his letter dated April 7 and April 18, 1975 (Paragraphs #8 and #11) in response to the specific allegations of fraud and intimidation as filed by the respondent and the intervener in the letters from their respective counsel dated March 25 and April 17, 1975 (Paragraphs #6 and #10). As regards the allegation of fraud, Mr. Miller further questioned the propriety of permitting the respondent to raise this issue in these proceedings having regard to the principles as set out in the Durable Drywall Limited Case (1973) OLRB Rep. 145.

17. Dealing firstly with the question of particulars in relation to the allegation of fraud, we are satisfied, upon carefully reviewing the correspondence as filed, and taking into account the representations of counsel thereto, that the facts relied upon have been set out with sufficient particularity in the circumstances, so as to enable the applicant to become sufficiently apprised at this time of the case that it has to meet. However as regards the allegation of intimidation, we find that a paucity of particulars does exist with respect to the times and places concerning the alleged intimidatory statements made to certain of the employees. With respect to the instance alleged to have occurred at the home of Gino De Santis, no date is set out. In these circumstances, the intervener is directed to supply the applicant with all relevant particulars within sufficient time prior to the continuation of hearing in this matter.

18. Mr. Miller's second argument is to the effect that as neither the respondent nor the intervener were parties to the original proceedings during the course of which the applicant



was certified, (See the decision of the Board dated September 26, 1974, in the N.C. Press Ltd. Case [Board File No. 6380-74-R]) they therefore have no status in these present proceedings to raise the allegation of fraud pursuant to the provisions of Section 50 of the Act. Mr. Sack's submission in this respect is to the effect that if the circumstances as alleged are correct, the Board would in any event not recognize the applicant in these proceedings as a trade union under the provisions of Section 94 of the Act.

19. As indicated in Paragraph #14 herein, the Board ultimately granted an adjournment of these proceedings. However upon delivery of the Board's oral ruling to this effect, Mr. Miller indicated that he was nevertheless now prepared in these proceedings to reprove the applicant's status. Although Mr. Sack on behalf of the intervener appeared agreeable to this procedure, Mr. McDermott on behalf of the respondent declined to agree to any continuation of this hearing pending his application before the Court to compel the attendance of Caroline Perly and Gregory Kielty. In all of the circumstances, the Board accordingly reaffirmed its initial ruling.

20. The Board has carefully reviewed the statements as contained in the Durable Drywall Case (supra), which dealt with a termination application filed under the specific provisions of Section 50 of The Labour Relations Act and on that basis alone, we are satisfied that it is distinguishable from the circumstances in the instant case where one of the parties in defence to the application for certification raises an allegation of fraud. Having regard to the particular circumstances and to the nature of these pre-hearing vote proceedings, we are therefore not prepared to preclude the respondent, as a proper party in the instant proceedings, from adducing evidence in support of its allegation of fraud.

21. It would appear that the respondent's application before the Court on May 14, 1975, and as referred to in Paragraph #14 herein, has been successful. In these circumstances, the Registrar is accordingly directed to list this matter for continuation of hearing in order to enable the Board to entertain the evidence with respect to the allegations as filed by the respondent as set out in its correspondence filed with the Board. Further the Board will entertain the allegations of the intervener as contained in the letter filed by Mr. Sack dated March 13 and March 20, 1975 (Paragraphs #2 and #5 herein), together with his representations as set out in Paragraph #18 herein, and, subject to the Board's direction as set out in Paragraph #17

herein, the Board may entertain the intervener's allegation of intimidation as partially set out in Mr. Sack's letter dated April 17, 1975 (Paragraph #10 herein).

6642-74-R: Dorothy Hall (Applicant) v. Local 280 of the International Beverage Dispensers' & Bartenders' Union of the Hotel and Restaurant Employees' and Bartenders International Union, A.F. of L., C.I.O., C.L.C. (Respondent) v. KILGORAN HOTELS LIMITED CARRYING ON BUSINESS AS YE OLDE BRUNSWICK TAVERN (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members  
F. W. Murray and H. Simon.

APPEARANCES AT THE HEARING: B. Midanik for the applicant;  
J. A. Ryder and J. Troll for the respondent; S. C. Bernardo  
and A. Nightengale for the intervener.

DECISION OF THE BOARD: May 21, 1975.

1. As a result of a telegram dated May 1, 1975, filed by the respondent requesting a hearing on the issue of the eligibility of certain persons to cast a ballot in a representation vote directed by the Board in its decision of March 24, 1975, the Registrar under instructions from the Board informed the parties that "the challenged voters will be permitted to vote in the regular manner and their ballots will be placed in the ballot box along with the ballots of the other voters". The ballot box however was to be sealed pending a ruling of the Board on the issues raised by the respondent. In the interim, after the representation vote was conducted as directed by the Registrar, the respondent filed charges dated May 5, 1975, inter alia, that the applicant's scrutineer offended the Registrar's direction with respect to electioneering "in that during the course of the voting she left the polling area for the expressed purpose of contacting employees who had not yet voted and did contact certain employees..." As a result counsel requests that the Board nullify the representation vote.

2. The respondent's representations with respect to the status of the disputed persons were two-fold. Firstly, it was argued that the Board on the basis of its decision dated January 3, 1975 (See; OLRB M.R. January 1975 p.38) is without jurisdiction to interpret the recognition clause of the relevant collective agreement between the intervener and the respondent for the purposes of determining the eligibility of employees to

cast a ballot. It is argued that since the interpretation of the recognition clause is a matter exclusively within the jurisdiction of a Board of Arbitration as provided under the terms of the agreement the Board should defer its process pending the outcome of the award of an appropriately seized tribunal. Secondly, it is alleged that because the five persons challenged by the respondent were neither members of the respondent nor paid dues in accordance with the dues deduction provision of that agreement they were not entitled to participate in the vote. The nature of the challenge is more succinctly expressed in the parties' agreement dated April 21, 1975, in connection with the arrangement for the vote;

"The union has challenged five (5) names on the attached agreed to voters' list on the grounds that those persons were never members of the respondent or carried work permits, as spelled out in the existing agreement, and therefore should not be allowed to vote."

3. The Board is authorized under section 49(2) of the Act where "any of the employees in the bargaining unit defined in a collective agreement" file an application "that the trade union no longer represents the employees in the bargaining unit" to exercise the powers under section 49(3) to determine whether a representation vote should be directed. And therefore "upon application under subsection 2, the Board shall ascertain the number of employees in the bargaining unit at the time the application is made and whether or not 50% of the employees in the bargaining unit have voluntarily signified in writing... that they no longer wish to be represented by the trade union." Upon being satisfied that "not less than 50% have so signified, the Board shall by a representation vote satisfy itself that a majority of the employees desire that the right of the trade union to bargain on their behalf be terminated".

4. The Board in the ordinary course was satisfied that the applicant had satisfied us of the requirements of section 49(3) and directed that a representation vote be held. We therefore find that determining the eligibility of voters to cast a ballot is so patently integral to the discharge of our duties of processing an application under section 49 that no further comment should be necessary. Nevertheless, the Board in addressing itself to the representations of counsel notes that there is a clear distinction between the requirement of interpreting the terms of a collective agreement for the purpose of exercising jurisdiction under the Labour Relations Act



and for the purpose of determining the application, administration and alleged violation of the agreement. The former is for the exclusive jurisdiction of the Board under Section 95(1) of the Act; the latter for the exercise of the Arbitration Board under Section 37(1) of the Act. It may very well be that occasions may arise where a particular term of an agreement, such as the recognition clause, requires shared occupation by both tribunals with a view to discharging their respective responsibilities. Nevertheless this does not justify either tribunal from trespassing on matters that are exclusively the jurisdiction of the other. In other words the Board can discern no contradiction between interpreting the recognition clause of the agreement in order to determine those employees eligible to participate in a representation vote in a proceeding under the Act and the requirement of an Arbitrator to interpret the same recognition clause in order to determine whether a violation of the terms thereof have occurred. [See for example; Re: Canadian Industries Limited [1972] 3 O.R. 63 (CA)].

5. In any event, the Board notes that the respondent in its letter dated January 9, 1975, has heretofore admitted that the persons whose eligibility to vote is being questioned are subject to a grievance under the terms of the collective agreement where it is alleged that the intervener employer;

- (a) has employed Steve Waxman and Peter Chaplin and other employees as waiters working within Article 2 of the collective agreement...
- (b) has failed to include all employees covered by the collective agreement in the check-off list...contrary to the collective agreement.
- (c) In addition...the respondent...has improperly prevented the employees concerned from presenting themselves to the union for the purposes of joining the trade union and regularizing their employment status in accordance with the collective agreement.

We therefore find that the respondent's challenges to the voters' list are inconsistent with its past admissions of the employment status of these employees as members of the bargaining unit and therefore cannot at this stage in the proceedings be heard to deny them. In this regard we note that the intervener's

representation that these employees are covered under terms of the collective agreement and its dispute with the respondent pertains to whether these employees fall within a classification that requires the employer to deduct dues check-off. The Board dismisses the respondent's challenges to the voters' list and directs that the ballots cast by them be counted.

6. The evidence adduced in support of the respondent's charges indicates that the scrutineers in attendance at the time of the vote engaged in a conversation with the Board's Returning Officer on the subject of the whereabouts of those employees who were eligible to vote. Mrs. Hall admitted to leaving the voting station on two occasions. The second time was precipitated by a remark at approximately half way through the vote to the effect that some of the employees may not have known where the vote was being held. The evidence is unclear as to whether the Returning Officer asked her to check out the circumstances or whether she indeed offered her services "to round up the employees." In any event the evidence indicates that Mrs. Hall only left the voting premises for an instant after which time she returned to her post. Mrs. Hall testified that during her absence she heard a number of employees ascending the stairs and restricted her remarks to advising them to come prepared with their identification cards. No further evidence was adduced with respect to what transpired during the course of Mrs. Hall's absence from the polling station. On termination of the representation vote each scrutineer signed the following document;

Certification of Conduct of Election

Date of Election - Thursday, May 1, 1975

Hall of Election - Toronto Ontario

We, the undersigned, acted as Scrutineers for the parties herein in the conduct of the balloting at the time and place above mentioned. We certify that the balloting was fairly conducted and that all eligible voters were given an opportunity to cast their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote.

Dorothy Hall

For the Applicant

J. Troll

For the Respondent

M. Nightengale

For the Intervener.

7. The Board dismissed the respondent's initial submission at the hearing that the right not to vote is a precious right that was usurped by the activities of Mrs. Hall because the refusal by an employee to vote is in effect a ballot cast in the respondent's favour. Counsel conceded the futility of the argument however when it was pointed out that under section 49(4) of the Act only ballots cast are relevant with respect to the ultimate disposition of a representation vote directed under The Labour Relations Act. In regard to the respondent's submissions with respect to the breach of the Registrar's direction, the Board is satisfied that even if the evidence supports a finding that Mrs. Hall can be deemed to have engaged in electioneering, it has not been demonstrated that the outcome of the vote could necessarily have been affected by her conduct. Indeed, in light of The Certification of Conduct of Election Document filed herein we are not prepared to ascribe Mrs. Hall's conduct at the material time of the vote any greater significance than an imprudent indiscretion.

8. The Registrar is directed to cause the ballot box to be unsealed and the ballots counted.

7337-74-U: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Complainant) v. YORK BAG COMPANY LIMITED, KROY PANE PLASTICS LIMITED & RIGIDFLEX CANADA LIMITED (Respondents).

- and -

7361-74-U: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Complainant) v. YORK BAG COMPANY LIMITED, KROY PANE PLASTICS LIMITED & RIGIDFLEX CANADA LIMITED (Respondents).

- and -

7364-74-U: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Complainant) v. YORK BAG COMPANY LIMITED, KROY PANE PLASTICS LIMITED & RIGIDFLEX CANADA LIMITED (Respondents).

- and -

0004-75-U: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Complainant) v. YORK BAG COMPANY LIMITED, KROY PANE PLASTICS LIMITED & RIGIDFLEX CANADA LIMITED (Respondents).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members  
H.J.F. Ade and E. Boyer.



APPEARANCES AT THE HEARING: B. Chercover and L. Rosekat for the complainant; J. P. Sanderson, B. Lombardi and S. C. Bernardo for the respondents.

DECISION OF THE BOARD: May 28, 1975.

1. The name: "York Bag Co. Ltd., Kroypane Plastics Ltd., Rigidflex Canada Ltd." appearing in the style of cause of this application as the name of the respondents is amended to read: "York Bag Company Limited Kroy Pane Plastics Limited Rigidflex Canada Limited".

2. The Board directs that these applications be consolidated and treated as one application.

3. This is a complaint filed under section 79 of the Act wherein it is alleged that the grievors; namely, Edward De Bartelo, Rino Martin, Mario Derenzo, R. Buna, G. Beiforte, C. Gigante and A. D'Amico were discharged for their union activity contrary to Sections 58 and 61 of the Act.

4. The Board notes the agreement of counsel for the respondent waiving any procedural irregularity with respect to the filing of the complaint on behalf of Messrs. De Bartelo, Buna and Martin.

5. In December 1974 the complainant was engaged in a campaign to organize the respondents' plant employees at its Dennison Avenue location in Metropolitan Toronto. The evidence establishes that several employees were approached at their homes or during coffee or lunch breaks at the plant with a view to soliciting their support. The evidence indicates that the complainant's efforts to organize the respondent's employees did not appear to have resulted in an application for certification.

6. The respondent is engaged in the business of re-claiming scrap materials and reprocessing the same for market consumption. As a result of a decision to consolidate its three plant operations in Metropolitan Toronto the respondent in May, 1973, purchased its Dennison Avenue Plant. Because the purchased plant required renovation and old machinery required overhauling or replacement the projected consolidation was to be phased in over a period of time. The construction phase of the plant renovation was completed in January 1974. The evidence indicated however that some members of the construction crew retained for this purpose were employed by the respondent

on a permanent basis to perform sundry construction and maintenance duties. As the construction and renovation phase of the programme was nearing completion the operational phase was proceeding. Old plant machinery was either overhauled or replaced, and, employees were gradually transferred to the renovated plant from the other plants. At the material time of these proceedings the respondent was continuing its efforts to complete its programme for consolidation.

7. At the initial hearing scheduled in this matter the proceedings were adjourned in order to enable counsel for the respondent to prepare an answer to the complainant's allegations once having been furnished with requested particulars. In essence these particulars related to a number of conversations that occurred after the terminations of February 14, 1975, between certain named grievors and members of the respondent's managerial staff. Upon resumption of the proceedings witnesses called by the complainant related the contents of the conversations alleged in the particulars and were thereby exposed to the test of cross-examination. Save for Mr. Benito Lombardi, the respondent's production manager, counsel elected not to call as witnesses the other parties to these alleged conversations. This factor in the Board's view had a significant bearing in resolving some of the issues arising out of the instant dispute.

8. Messrs. Gigante and Derenzo were employed in the respondent's construction and maintenance department at the time of their termination. Mr. Gigante is a journeyman carpenter who was in the process of completing an executive office at the time he learned of his discharge on Monday February 17, 1975. His foreman Bill Burr told him that there was no further work for him to perform. When he challenged this statement the grievor was referred to Mr. Jack Rosenfeld the respondent's chief executive officer. During the course of the conversation Mr. Gigante discovered he was to have been discharged along with the other grievors the previous Friday afternoon. A phone call to Mr. Benny Lombardi confirmed that the failure to terminate was attributed to an oversight. During the course of the conversation Mr. Rosenfeld expressed in vigorous terms his opposition to trade unionism. At one point he explained that a trade union that came into his place had the same effect on him as if he had been shot or had his legs broken. The grievor complained that he had done nothing wrong in joining the complainant union and asked that his job be returned. In a like manner, Mr. Mario Derenzo upon attending the respondent's premises on the Monday following his discharge to retrieve his tools challenged his foreman's statement that there was no work left for him to perform. The

grievor was employed at the time of his termination as a cement finisher. He was in the process of completing a trench for the placement of a new extruder machine purchased as part of the respondent's renovation programme. Upon challenging his foreman's statement, Mr. Rossi likewise referred him to Mr. Rosenfeld. At the meeting Mr. Derenzo claimed that he refused to join the union upon being solicited by the complainant's representatives at his home. Mr. Rosenfeld repeated his views on trade unions with the same candour as expressed to Mr. Gigante. Mr. Rosenfeld is alleged to have told Derenzo that joining a trade union is tantamount "to someone going into your house with a baseball bat and breaking your legs." At the end of both their interviews the grievors were referred to Mr. Lombardi with respect to arranging employment at a future date. Mr. Lombardi is said to have indicated to the employees that where the finally of decision to discharge has to be made Mr. Rosenfeld simply "doesn't like to say no". Mr. Rosenfeld was not called by the respondent to adduce evidence.

9. Mr. Lombardi indicated to the Board that he indeed did receive a telephone call from Mr. Rosenfeld with respect to his failure to terminate Mr. Gigante's employment on the afternoon of Friday, February 14th. Nevertheless Mr. Lombardi explained that there was little work left for construction employees to do after the renovation phase of the plant had been completed. In any event, the decision to terminate Messrs. Gigante and Derenzo was taken because they were highly paid employees and whatever work remained could be accomplished more economically under contract. The uncontradicted evidence before us does not support the conclusion that there was "little" work for these two employees to perform at the time of their discharge in that contractors were indeed retained immediately thereafter to complete the work commenced by the grievors.

10. Amedea D'Amico had been employed by the respondent for fourteen years operating a crane and performing other labourer's tasks. On the afternoon of February 14, 1975, he was approached by his boss, Gabrielle Nuccarine and was informed of his discharge. When he asked why he was being fired Mr. Nuccarine told the grievor; "We have a list of employees that signed for the union and you signed for the union." Mr. D'Amico indeed had signed a card in support of the complainant's organizational campaign. The grievor on the following Monday pursued the issue with Mr. Lombardi. Mr. Lombardi indicated that he first learned of the grievor's union activity at this time. He admitted that he became angry



when D'Amico indicated that he had signed a card without appreciating its consequences. During his conversation with Mr. Gigante, Mr. Lombardi asked "why did he sign for the trade union when in a couple of years he would go on pension. He doesn't need a trade union". On the day of his firing Mr. D'Amico's son Giussepi, phoned Mr. Lombardi to inquire further of the discharge. Mr. Lombardi refused to disclose the reason for the termination but referred him to Mr. Nuccarine. Giussepi D'Amico thereupon phoned Mr. Nuccarine and upon inquiry was told that "your father is out because he joined the trade union".

11. Counsel for the respondent did not object to this conversation being admitted in the record although he indicated that he would be making representation on the matter later on in the proceedings. The evidence indicated that Mr. Nuccarine was not engaged as a plant foreman but was more appropriately described as a "lead hand". Mr. Lombardi indicated that although not a foreman he is given certain responsibilities of a supervisory nature. Indeed, one of Mr. Nuccarine's duties was informing the grievor of his discharge. And when Giussepi D'Amico phoned Mr. Lombardi with respect to his father's difficulties he was referred to Mr. Nuccarine. We are satisfied that Mr. Nuccarine was employed in a supervisory capacity and was viewed by the grievor, D'Amico, as a boss who could affect his employment status. The Board therefore finds the testimony relating to the conversations involving Mr. Nuccarine is admissible evidence and will attach appropriate weight thereto. Mr. Nuccarine was not called by the respondent to adduce evidence. (See; Regina v Strand Electric Ltd. [1969] 1 O.R. 190 (CA) at p. 193.

12. Mr. Lombardi testified that Mr. D'Amico was laid off along with the other grievors because of a combination of factors including an accumulation of inventory attributable to increased plant efficiency and an unanticipated depletion of orders from the respondent's customers. On the morning of Friday, February 14, 1975, a meeting was held with Mr. Rosenfeld where persons who were to be laid off was determined. Mr. Lombardi stated that it was with regret that they terminated the services of Mr. D'Amico. He indicated that the grievor at the age of 63 was incapable of adjusting to the new machinery that was being installed. Mr. Lombardi, however, was unable to explain (to the Board's satisfaction) the reason for the grievor's wage increase the week before. Nor was an explanation forthcoming for the representations made to the grievor that he would be "called back" in a few weeks time.

Mr. Lombardi's only explanation for not calling Mr. D'Amico back to work when approximately twenty employees were retained after the discharges were effected was because "Mr. Rosenfeld preferred a younger person." Indeed, Mr. Lombardi's admission that a large number of employees were retained after the discharges betrays the legitimacy of the excuse of an absence of work.

13. On the evening shift of Friday, February 14, 1975, Mr. Beiforte was informed by his foreman, Joe Floridaia that his employment with the respondent was being terminated. Mr. Floridaia prefaced his remarks by saying "I don't have the courage to tell you. Monday night you should not come back to work." When asked for an explanation the grievor was not accorded one. On the following Monday he approached Mr. Lombardi and Joe Delileo, another foreman, and was told there was no work. During the conversation the grievor when he persisted in his quest to determine the real reason for his discharge was faced with "a wall of silence". In exasperation the grievor stated "I more or less know the reason". And in response Mr. Lombardi said "If you had all worked each on your own none of this would have happened." Mr. Lombardi insisted that the word "trade union" never arose during his conversation with Mr. Beiforte. The real reason for the "lay off" was because of an absence of work. The next day when the grievor returned to the respondent's premises to pick up his cheque and unemployment insurance book he asked Frank Columbo, another foreman, "Why is there all this silence, why are they sending people away?" Mr. Columbo stated: "I don't know, here I am starting the machines, there are no operators, I have to go around the wheel to pick up pipe." In other words, Mr. Beiforte refused to accept the excuse that his discharge was attributed to an absence of work for him to perform. And Mr. Lombardi failed to explain when employees were later retained the reason why Mr. Beiforte was not recalled.

14. The Board is satisfied that the grievors, Gigante, Derenzo, Beiforte and D'Amico were discharged for their union activities contrary to section 58(a) of the Act.

15. Subject to the terms of our decision dated May 1, 1975, the Board directs that the respondent reinstate Messrs. Gigante, Derenzo, Beiforte and D'Amico in the same or like position which they held on the date of their termination and that the respondent pay to the said grievors full compensation for any lost wages to which they are entitled to the date of reinstatement. If the parties are unable

to agree on the appropriate amount of compensation, that issue will be determined by the Board upon the request of either party for a further hearing for that purpose.

16. The Board is not satisfied that a prima facie case in support of the allegations filed in the complainant's complaint has been made with respect to the grievors, Buna, De Bartelo and Martin. The complaint insofar as it relates to these named grievors is therefore dismissed.

0185-75-R: Canadian Textile & Chemical Union (Applicant) v. CANADA CARBON AND RIBBON COMPANY LIMITED (Respondent) v. Group of Employees (Objectors).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES AT THE HEARING: R.K. Rowley for the applicant; W. Winkler, Fred Wood and D.I. Wakely for the respondent; Gordon Fletcher and Mark Herrington for the objectors.

DECISION OF THE BOARD: May 29, 1975.

1. This is an application for certification.

. . .

4. Having regard to the agreement of the parties and the Board's practices the Board finds that all employees of the respondent in Brighton, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week, constitute a unit of employees appropriate for collective bargaining.

5. A statement of desire bearing the signatures of 6 persons purporting to be employees of the respondent was filed with the Board in opposition to the application.

The preamble of the documents reads:

"The undersigned names are employees of Canada Carbon and Ribbon Company, Butler Street, Brighton, Ontario who are in opposition to any union activity there. Mr. Mike Farrell whose



address is 34 Peterson St. R.R. 5 Trenton, Ontario will represent us at the hearing on May 20, 1975."

There is a sufficient overlap between the names of this document and the membership evidence filed by the applicant to cause the Board to inquire into the document's origination and circulation. The inquiry is to ascertain that the employees' "change of heart" is bona fide and without influence from the employer. The Board's experience in this regard is outlined in the wellknown case of Welders, Public Garage Employees, Local 8417 and Pigott Motors (1961) Ltd. 63 CLLC 16,264. The Board must be satisfied that the petition or statement of desire constitutes a true expression of the voluntary wishes of the employees. The onus of making all the witnesses available who may have information concerning the origination and circulation of such documents rests upon the objecting employees. (See Sentry Department Stores [1968] OLRB M.R. Nov. 849; Willow Press [1971] OLRB M.R. 59.)

6. In the facts at hand, Mr. Mike Farrell, the person designated to represent the opposing employees and one of the prime proponents of the statement of desire, did not attend the Board's hearing. No satisfactory explanation was given to the Board.

According to the evidence of Mr. Gordon Fletcher, the employee who attended the hearing in Mr. Farrell's place, Mr. Farrell attempted to assist a number of employees in withdrawing from the membership of the applicant prior to the application. Thus when the application was made he drafted the statement of desire and Mr. Fletcher typed it. Moreover Mr. Farrell obtained a majority of the signatures on the document although all but one of these signatures were obtained in Mr. Fletcher's presence.

7. Finally Mr. Farrell attended a very unusual meeting of employees convened by Mr. Reynolds, the manager of the respondent's plant, in the plant's board room, on company time. This meeting was called the day the "green sheet" was posted and the evidence indicates that Mr. Farrell was the principal speaker against the applicant.

8. In Marsh Frozen Foods Limited [1970] OLRB M.R. Sept. 649 the Board was confronted with very similar facts—where the person who primarily conceived of the statement did not testify—and came to the following conclusion:

"In this case the "idea" of the statement of desire was conceived not by Mr. Dupuis but by an employee who failed to testify and accordingly the failure of that employee to testify has resulted in our being unable to assess whether the circumstances surrounding the origination arose as the result of the voluntary wishes of that employee. Further, to accept evidence of this type could result in abuse, in that, an employee improperly influenced could approach another employee and have him take up a statement of desire. We are not prepared, having regard to the evidence and particularly to the fact that the idea did not originate with Mr. Dupuis, to accede the argument that the mechanical process of drawing up the statement and circulating it constitute sufficient evidence or origination to satisfy this Board, and since the person who primarily conceived of the statement of desire did not testify we are not persuaded on the balance of probabilities that the statement of desire is acceptable as casting doubt on the evidence of membership filed. See Retail, Wholesale and Department Store Union, AFL: CIO:CLC v Cherney Bros. Limited, January 1965, OLRB Mthly. Rep., 525; International Association of Machinists & Aerospace Workers v International Harvester Company of Canada Limited v Group of Employees, July 1969, OLRB, Mthly. Rep., 561."

9. By the same reasoning we have decided that evidence adduced in support of this statement of desire is insufficient. It therefore does not cast a doubt on the membership evidence filed and is dismissed.

10. The Board is satisfied on the basis of all the evidence before it that more than sixty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made were members of the applicant on May 8, 1975, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of the Labour Relations Act to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

11. A certificate will issue to the applicant.

7196-74-U: Walter Princesdomu (Complainant) v. CANADIAN UNION  
OF PUBLIC EMPLOYEES LOCAL 1000 - ONTARIO HYDRO EMPLOYEES UNION  
(Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members  
J.D. Bell and O. Hodges.

APPEARANCES AT THE HEARING: J.C. Murray and W. Prinesdomu  
for the complainant; Ian Scott, Q.C. and William McCullough  
for the respondent.

DECISION OF THE BOARD: May 29, 1975.

. . .

2. The complainant alleges that he has been dealt with by the respondent contrary to the provisions of section 60 of the Labour Relations Act. He requests that the respondent and Ontario Hydro be ordered to process a grievance on his behalf to a board of arbitration established pursuant to the collective agreement between them. He also asks that the respondent be ordered to pay for any damages suffered as a result of the alleged unlawful failure to proceed to arbitration with his grievance.

3. Paragraph three of the complaint reads:

"(a) name of any other person, trade union, council of trade unions or employers' organization that may be affected by the complaint:

Ontario Hydro, Central Region

"(b) address of person, trade union, council of trade unions or employers' organization that may be affected by the complaint:

5760 Yonge Street, Willowdale, Ontario"

The Board, through its Registrar, therefore delivered a copy of the complaint to Ontario Hydro, Central Region on the 29th of January, and notified it that a hearing would take place on February 28, 1975. From that date forward Ontario Hydro was notified of all hearings scheduled in regard to the matter and was given copies of all documents pertaining to the matter.



4. The complainant, Mr. Walter Prinesdomu, is a member of the respondent and has been employed by Ontario Hydro since September 28, 1970, occupying a position as a junior cable technician since 1974. On May 27, 1974, Ontario Hydro posted a vacancy notice in regard to a cable technician job. ...

The closing date for the posting was June 10, 1974, and Mr. Prinesdomu applied for the advertised vacancy on June 1, 1974. The application outlined his education, his previous hydro positions, and his employment with other firms in other positions. The application was received by his supervisor, Mr. Finn Rimmer, on June 4, 1974, and Mr. Rimmer interviewed Mr. Prinesdomu during the last two weeks of July.

5. While he got the impression from this interview that he would be rejected, he was told that his past job performance had been good and the Board was informed that he had never been disciplined or reprimanded in this regard. On August 13, 1974 he returned from his holidays and was told by Mr. Rimmer that he had not been selected for the vacancy. As a result of this information, he requested that management explain its actions—a right accorded to him under Article 10.5(e) of the collective agreement. This request, made by the complainant directly or by his chief steward, Mr. D.C.B. Browne, caused the following memorandum dated August 19, 1974 from Mr. G.E. Fraser, Lines Engineer for the Central Region:

"Mr. Walter Prinesdomu  
Cable Crew  
Leaside T.S.

August 19, 1974  
File: 900.4

Dear Mr. Prinesdomu:

Re: Advertised Vacancy R374-47

In reply to your request, dated August 13, 1974, for an explanation as to why you were not selected for the subject vacancy, the procedure followed in selection was as follows:

1. From the applications received and the data contained therein, employees were selected for the interviews.

2. The interviews were held to gather as much information as possible in addition to that given on the application form, in order to determine who was qualified.
3. Of the number deemed qualified to do the job satisfactorily, the employee with the most seniority was selected.
4. Mr. H.J. Soares, whose ECD is May 23, 1970, was selected. Your ECD is September 28, 1970.

Yours truly,

(sgd.) "G.E. Fraser"

G.E. Fraser, P.Eng.  
Lines Engineer  
Central Region

F. Rimmer:jms

cc: Mr. H. Idiens  
Mr. D.C. Browne  
Mr. F. Rimmer"

6. Preceding the receipt of this memorandum, but sometime after August 13th, Mr. Prinesdomu went to see the chief steward for his department, Mr. Browne. He told Mr. Browne that he had been unfairly treated because no other applicant could have possessed the required experience for the cable technician job. Specifically, he mentioned to Browne that the successful applicant, a Mr. Soares, did not have any cable experience specified in the job documents—he had never worked as a cable technician. Apparently, Mr. Browne said he would investigate the matter and would try to proceed with the grievance before Mr. Soares actually occupied the job on September 2, 1974, and Mr. Browne may have caused Mr. Fraser to write to the complainant. At about the same time, the complainant also requested a meeting with the personnel officer because he believed that Mr. Fraser's letter was contrary to the collective agreement. This request resulted in a preliminary meeting with Mr. Rimmer and at this meeting, according to the complainant, Mr. Rimmer attempted to discourage him from seeing Mr. Idiens, the personnel officer. Moreover, the complainant claims that Mr. Rimmer told him that Mr. Soares was qualified in seven out of ten requirements of the cable

technician job. This meeting was followed by a quite heated exchange of memoranda between the complainant and Mr. Rimmer, with Mr. Rimmer accusing the complainant of improper treatment of Mr. Soares on his entry into the new job, and Mr. Prinesdomu accusing Mr. Rimmer of past and present discrimination against him. Copies of these memoranda were sent to the personnel office and Mr. Browne, and appear to have established a consensus that a further and plenary meeting was necessary.

7. Thus, a meeting of Mr. Idiens, the complainant, Mr. Browne, Mr. F.J. Barrett (operations manager), Mr. Fraser (lines supervisor), Mr. H. Black (general cable foreman), Mr. Rimmer and Mr. R.W. Jones (cable supervisor) was convened on September 30, 1974. According to the complainant, the general atmosphere in the cable crew and his relationship with his supervisor were discussed but Mr. Idiens refused to discuss his unsuccessful job application in any detail, indicating that it might be dealt with in the grievance procedure. As a result of this meeting, the grievor received the following letter from Mr. Fraser dated October 4, 1974:

"MR. V. WALTER PRINESDOMU  
Cable Crew

October 4, 1974

Leaside TS

Meeting September 30, 1974

I hope our meeting of September 30, 1974, was useful in clarifying and providing a better understanding for you and others in attendance of some of the problems as detailed in your letters of September 10, 1974, to Mr. Rimmer and myself. Please consider this letter to be in reply to both the above noted letters.

I feel that there has been no deliberate or intentional harassment of you or other crew members and assure you that it is my wish and that of your Supervisors that all staff be treated fairly and work harmoniously together.

I hope you appreciate that your Supervisors' job is not an easy one as, in controlling the work to be done, they must assign work and make decisions which



cannot be popular with everyone. Job descriptions cannot and are not intended to include all minor duties but should include the major responsibilities. Activities associated with or related to these major responsibilities are understood to also be included. I understand you are satisfied that your Job Description adequately describes your job at this time.

I can understand your disappointment in not being selected for the position of Cable Technician; however, I assure you that in approving this selection, I considered the qualifications of the applicants and the terms of the Collective Agreement.

8. I was pleased to hear you say near the end of our meeting on September 30, 1974, that you felt that our discussions had helped. I personally feel that no one wishes to take advantage of you or is prejudiced against you in any way and I hope you can now accept this as true as I'm sure it will result in a much improved and happier working relationship for both you and your Supervisors.

Please advise if Mr. Idiens or I can be of further assistance.

(sgd.) "G.E. Fraser"

GEF:mfc

Lines Engineer  
Central Region

cc Mr. F.J. Barrett  
Mr. F. Rimmer  
Mr. J.H. Idiens  
Mr. H. Black  
Mr. D.C. Browne "

9. But before this meeting Mr. Prinesdomu was beginning to have doubts over the union's sincerity in representing him. After he had provided Browne with his resumé of experience and qualifications about August 13th he claims to have heard nothing from him and claims that he was forced to call him several times to inquire into the progress of the complaint. And during one of these conversations Mr. Browne is said to have told him that the union preferred that the most senior applicant be appointed to a vacancy regardless of

qualifications although Ontario Hydro would never accept this condition in the collective agreement.

The complainant told the Board that, after the September 30, 1974 meeting, the chief steward told him he had filed an intent to grieve. However, he continued to telephone Mr. Browne until when, just a few days before the three month grievance time limit under the collective agreement was to expire, Browne told him "the union [had] decided not to proceed with the grievance" and that it was not his decision.

10. All of these events caused the complainant to conclude that his trade union and Ontario Hydro were acting contrary to the collective agreement. The Board was told that a senior cable technician must work alone or in charge of other less qualified employees, and the job cannot be done if the employee does not know where the cables are located. Mr. Soares lacked this knowledge because he had never been a junior cable technician. In fact counsel to the respondent interjected and conceded that Mr. Soares did not meet the technical qualifications of the job but added that the applicant didn't either. Counsel submitted that, because both employees lacked the requisite qualifications, the company's decision to fill the vacancy as it did could not be grieved. But Mr. Prinesdomu testified that he had both inside experience and outside experience and he submitted that Ontario Hydro's memorandum of August 19, 1974 established that it deemed him qualified. The complainant went on to establish that he wrote to the President of the trade union contesting the actions of Mr. Browne and the President asked Mr. Bill McCullough, the Collective Agreement and Grievance Officer, to investigate the matter. This correspondence reads:

"Mr. Bill Vincer,  
President,  
CUPE, Local 1000  
244 Eglinton Ave.,  
Toronto 12

November 7, 1974

Dear Mr. Vincer:

On August 13, 1974 I was informed that I was not selected for the position of Cable Technician Vacancy No. R-374-47. As the reason for selecting Mr. Soares was given his more seniority. According to the Collective Agreement, Article 10.1(b)(1) and

10.4(a) seniority should have not been the deciding factor in this case as Mr. Soares does not have any applicable cable experience as required by the Job Specification.(experience) for this position. Specifically, he does not have the required on the job experience, is not familiar with the basic fundamentals of low- and high-pressure cable systems, locations of cable terminals and cable routes and the overall organisation of the Lines Section and the duties involved.as required by the Job Documents.

Secondly, there was another qualified applicant, Mr. Jarry Horcica, who has all the required qualifications and considerably more seniority than Mr. Soares. Should seniority be the deciding factor, he should have been selected.

On August 15, 1974 I contacted Mr. Bevis Browne, my Chief Stuart, and after discussing the case he agreed that I had very good cause for a grievance and he promised to proceed with the Grievance. The next day I delivered all the relevant documents.

On September 30, 1974 I was informed by Mr. Browne that "Intent to Grieve" had been already filed and asked me again if I still wanted to proceed with the grievance. I confirmed that I wished to proceed with the grievance as I was convinced that I was unfairly treated by Hydro, contrary to the Collective Agreement. Mr. Browne then promised to proceed with the grievance as soon as possible. Subsequently, I inquired a number of times on the progress and was always promised action later. Finally, On November 5, 1974 Mr. Bevis Browne informed me that the Union would not grieve on my behalf, as the Union position was that the most senior applicant should be selected. He also answered affirmatively my question if Mr. Soares had been Union Steward.

Mr. Vincer I ask you with all due respect to instruct my Chief Stuart Mr. Bevis Browne to proceed with the grievance as he agreed.

Please be informed that if the Union fails to grieve on my behalf, for whatever reason, I will have no other alternative but to instruct my lawyer to start legal proceedings under The Labour Relations Act against the Union for failing to represent me contrary to the said Act.



Yours truly,

(Sgd.) 'Walter Prinesdomu'  
cc. Mr. Bevis Browne."

"CANADIAN UNION OF PUBLIC EMPLOYEES—C.L.C.

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ONTARIO HYDRO EMPLOYEES' UNION Local 1000

November 15, 1974

Mr. Walter Prinesdomu  
11 Pomander Rd.  
Unionville L3R 1X5  
Ontario

Dear Brother Prinesdomu:

Our President, Bill Vincer, has asked me to reply to your letter to him dated November 7, 1974.

Bill and I have checked out all of the circumstances and facts involved and have fully discussed the whole matter.

Both of us have decided that you do not have a valid grievance. Let me first review with you, some of the basic rules in job selection procedure.

In a non-supervisory job, the Collective Agreement in Article 10, item 10.2(b) page 11 requires that: "Determine the employees who are qualified to fill the vacancy. One of the requisites is the minimum years of experience as set out in the job specification."

The particular job which you applied for was a cable technician job code 343007 and it is a degree 7 in experience. This means that it requires over 4 years and up to including 6 years of experience in the duties described.

You started with Ontario Hydro on September 28, 1970 and the selection for this job was made in early August 1974. An applicant had to have the required experience by the closing date of the vacancy R-374-47 which was June 10, 1974.

You therefore, did not have the minimum 4 years experience by June 10, 1974.

If no applicant to a vacancy is qualified or has the required years of experience, then Management can hire from outside of Ontario Hydro or select someone within Ontario Hydro who they deem to have the most potential to fill the vacancy.

We can not pursue a grievance on your behalf for this job because you do not meet the requirements for the job, as required in Article 10 of the Collective Agreement.

Our investigation of this matter involved reviewing Mr. Fraser's letter of August 19, 1974 to you and Mr. Rimmers memo dated September 6, 1974 to you and your letter to Mr. Rimmer dated September 10, 1974.

We have also reviewed the list of applicants for Vacancy R-374-47 as well as discussing the matter with your Chief Steward, Bevis Browne.

I mention this to show you that your case was carefully reviewed by both the President and myself.

Both the President and myself wish you every success in your career with Ontario Hydro.

Faternally yours,

(sgd.) 'Bill McCullough'

WM:mh

Collective Agreement  
& Grievance Officer "

11. Before reviewing the evidence submitted on behalf of the respondent trade union, it is necessary to review the relevant sections of the collective agreement and job documents to appreciate fully the complainant's grievance.

12. Article 7. of the collective agreement contains the usual management rights clause, and Article 10, dealing with seniority, promotions and demotions, reads (in part) :

"(b) Non-Supervisory Positions

(1) Using all available information, determine the employees who are qualified to fill the vacancy. One of the requisites

is the minimum year of experience as set out in the Job Specification. The primary consideration is his qualification to do the job satisfactorily. This must be decided by the supervisors concerned before any consideration is given to seniority. Career Planning Sheets may be used as an aid in making this decision.

- (2) A recommendation by the supervisor should then be made from the employees selected as qualified to do the job satisfactorily - overall seniority being the governing factor."

Article 10.5(f) reads:

"An employee's experience with another company will be taken into consideration in determining his qualifications for a position, but unless such experience is with an acquired company, he will be given only Ontario Hydro service credit for seniority purposes. (Except as provided by 23.0, Part 'G'.")

Part D., Article 8.0, dealing with the posting of vacancies for weekly-salaried personnel, contains Article 8.1(c) (1) which reads:

"A Notice of Vacancy referring to jobs covered by the Clerical-Technical Job Evaluation Plan shall be based on the Job Description and Job Specification. Nothing contained in the Notice of Vacancy shall contravene the information contained in the Job Documents. No important information (subject to space limitations) shall be omitted."

13. By Article 10.0 the Union Clerical-Technical Job Evaluation Manual is part of the collective agreement. The introduction to the manual outlines its purpose and the significance of a job description and a job specification in the following way:

"Job Evaluation is the complete operation of determining the Rating for an individual job, in relation to other jobs in the organization covered by the Plan, based on individual job demand and



not performance of the incumbent. Job Evaluation begins with Job Analysis to obtain information, carries on through the preparation of a Job Description and Job Specification and includes the process of relating the job to other jobs by means of the Rating Scale. In this process the facts portrayed in the Job Description form the basis for determining the Rating. The Job Specification records the facts and reasons for the Degree Levels assigned to each Factor. The Job Documents are mutually supportive of one another and the facts contained therein support and justify the Rating.

"Application of the dollars follows. This is accomplished by transporting the Rating Classification established by Job Evaluation to the corresponding Salary Range as set out in the Salary Schedule, which is established through Collective Bargaining. Selection of the appropriate Rate within the Salary Range is governed by the rules covering Promotion, Downward Restructuring, Progress, and the like."

14. For job evaluation purposes, the manual describes the education factor of a job as:

". . . a scale of measurement for the amount of theoretical knowledge, specific education and specialized training which is required as a basis for learning and performing the job. These requisites may be met by formal education or independent studies. The degrees are set up in varying amounts of formal education, or the equivalent."

The experience factor is described as:

". . . a scale of measurement for the amount of practical experience that an average individual having the appropriate theoretical knowledge, specific education and specialized training, would require to be able to perform the job duties. It includes:

- "(a) Experience on any related work in lesser positions which is necessary for performance of the job.

- (b) The period of training and adjustment on the job itself."

The rules of application for the experience factor read:

- "1. This factor deals with practical training and knowledge. It should not be dealt with until an appropriate degree of Education (theoretical knowledge) has been established.
  2. It covers the time required to learn the practical application of theoretical knowledge to work problems, and to learn the necessary techniques, methods, practices, procedures, use of forms, routines, etc.
  3. Experience is expressed in terms of the minimum months or years required. This minimum assumes that the employee has the opportunity to work in the necessary fields or on the various appropriate aspects of the work or related work for just sufficient time to become competent. This should not be confused with the amount of experience the employee may actually have before the opportunity arises to step into the job.
  4. The specification elaborates on the amount and type of experience that is required under (a) and/or (b) in the Factor Definition. The amount of experience required for the job is the sum of (a) and (b). The simpler jobs may require only (b).
  5. Under this factor, no consideration is given to the maturing of the individual."
15. Finally, it is of note that the 7th degree level was assigned to the experience factor for the cable technician job and the job specification for that factor reads:

"EXPERIENCE - Requires experience in the Research Division to become familiar with Ontario Hydro test methods and procedures and the use of the various testing instruments for the testing of electrical circuits and hydraulic cable pressure systems. Requires experience in protection and control work to become versed in Ontario Hydro methods and procedures pertinent to relaying and testing with a variety of instruments as it applies to cables and all component parts and accessories. Requires some experience in the servicing and maintenance of pressure gauges and microswitch systems affiliated with cable alarms, oil pumping plants for underground cables, including valves, relays, motors and electrical circuits. Requires experience on the job to become familiar with the basic fundamentals of low- and high-pressure cable systems, location of cable terminals and cable routes, safety rules and standard protection codes, the overall organization of the lines sections and the duties involved.

A period of up to six years is considered necessary to gain this experience. [emphasis added]

16. In light of these provisions and documents the complainant's claim against Ontario Hydro and the respondent is as follows. Ontario Hydro, by its letter of August 19, 1974, took the position that both Mr. Prinesdomu and Mr. Soares were both qualified for the cable technician job and therefore Mr. Soares, being the more senior of the two, was entitled to the job by virtue of Article 10.2(b) (2). Mr. Prinesdomu contends that Mr. Soares cannot possibly be qualified when regard is had to the experience factor outlined in the job specification of the cable technician job. Part D, Article 8.1(c) (1) requires the notice of vacancy to be based on the job specification and nothing in the notice can contravene these job documents. The job specification for the cable technician indicates that one job requirement taken into account when the parties evaluated the job in accordance with the job evaluation manual was "experience on the job to become familiar with...the location of cable terminals and cable routes...the overall organization of the lines sections and the duties involved". Mr. Prinesdomu told the Board that Mr. Soares had no such on-the-job experience. Counsel to the complainant therefore claims that Mr. Browne, in refusing to process the grievance, ignored



the collective agreement and thereby acted in an arbitrary manner. Counsel further argued that because Mr. McCullough came to the conclusion that neither Mr. Soares nor Mr. Prinesdomu was qualified he had conducted such a negligent investigation as to have acted arbitrarily.

17. Mr. Browne gave evidence before the Board. He has been employed with Ontario Hydro since 1964. He was elected as chief steward in 1972 and it is a post he fills without pay and along with his regular work duties as a protection and control technologist. Before this incident he knew only the complainant's name and had never heard of Mr. Soares. He confirmed that he met with the complainant in August and said he would investigate. After receiving his application and resumé of qualifications he consulted with other union officials in regard to the meaning of Article 10.2(b)(1) and (2) and with management. He claims responsibility for the issuance of the August 19, 1974 memorandum of Mr. Fraser. He also examined Mr. Soares' previous job documents and asked fellow employees, who worked in the same classification as Mr. Soares had, whether they could perform the cable technician job. They told him that they could. Following Mr. Rimmer's letter of September 10, 1974, Browne thought that problems existed beyond the complaint and that the total situation required a meeting with management. Thus, he claims to have arranged the September 30, 1974 meeting with management. He confirmed that Mr. Idiens refused to discuss the particulars of the job vacancy complaint, although Idiens is reported to have said that management deemed Soares qualified. Browne told the Board that after this meeting Prinesdomu was upset and that as a general trait he was difficult to say no to. Therefore even though Browne apparently was not optimistic about the grievance he said he would look into it further and admitted he may have said an intent to grieve was filed. However, on this latter point he seems to have meant only that he told management he might have to grieve because no formal intent to grieve was every filed. Finally, he told the Board that sometime after this he decided not to file a grievance but because he was busy in October he did not inform Mr. Prinesdomu until his telephone call in early November.

18. In giving the details of this decision he said that after conducting his investigation he believed Mr. Soares was qualified, although he admitted

Soares lacked the on-the-job experience outlined in the job specification. Apparently he was prepared to accept management's decision despite this requirement in the job specification because, in his opinion, anyone who comes into a job lacks some experience. He explained that he believed an applicant needed the theory "to pick up the specifics but [he didn't] need [the actual] specifics... specifics [could] be picked up in a short period of time. In his opinion, the job specification was not terribly important when picking a job applicant. Therefore, it was by this reasoning that he concluded both Mr. Soares and Mr. Prinesdomu were qualified for the job in question, and that therefore the more senior employee should prevail. On cross-examination, he admitted possessing a personal opinion that seniority should be more important than it is in the collective agreement and that he told the complainant this but he denied having acted on this opinion in dealing with the grievance. Finally, he admitted procrastinating for as long as he did because, in his words, "Sometimes I'm a little chicken about saying no to people."

19. Mr. McCullough gave evidence before the Board. He is the Collective Agreement and Grievance Officer of the respondent. He has occupied the position on a full-time basis since 1963 and on a part-time basis since 1954. He is solely responsible for the management of the agreement and therefore all complaints deemed by a chief steward to constitute a grievance come to him for processing.

The Board was informed that there is no formal appeal from a chief steward's decision but the President has investigated into letters of dissatisfaction in the past. Therefore the President's request of him in regard to Mr. Prinesdomu was not unusual. He did not know either the complainant or Mr. Soares before this incident. In undertaking the investigation he first obtained the two job applications and then checked the meaning of a degree level 7 job in the job evaluation manual, determining that it required a minimum of four years' experience up to and including six years of experience. It was his opinion that if experience beyond an individual's years with Ontario Hydro was to be counted the experience had to be with a similar company, for example, British Columbia Hydro. Thus, after examining the complainant's job application he concluded that he possessed only three years and nine months of experience with Ontario Hydro. He did not think that Mr. Prinesdomu's

other experience was sufficiently related to fall within the above principle and therefore judged him unqualified. As for Mr. Soares, he believed him to be unqualified as well because, as an instrument technician III, he was not familiar with cable jobs, and believing both individuals to be unqualified for the job he concluded that management could select who it wanted—a conclusion that was identical with his counsel's earlier concession. The other aspects of his investigation consisted of obtaining the job applications, examining the documents in Mr. Browne's possession, and reviewing an exchange of memoranda dated August 19, September 6 and September 10 (the latter two being the exchange between Rimmer and Prinesdomu).

20. He did not talk to management and said that in doing these investigations he seldom did. Further he observed that it was not the union's job "to run down" another employee. But he admitted that his judgment was based upon a misapprehension of the facts because his investigation failed to reveal that management had deemed both employees qualified (at least the August 19th memorandum suggests this). And Mr. Browne admitted to being surprised by Mr. McCullough's response but relied on McCullough's greater experience in such matters and said nothing.

21. The issue before this Board is whether the trade union, acting through its officials, Mr. Browne and Mr. McCullough, violated section 60. The complainant does not contend that they acted in bad faith or that they discriminated against him. He claims that they acted in an arbitrary manner. Mr. Browne is a chief steward—the only official who can launch a grievance under the collective agreement (an employee cannot file a first stage grievance). The internal union policy describing his function reads in part:

"1. When a Chief Steward receives a complaint which he feels is a grievance, he should discuss it with management and then his Chairman. If the complaint is assessed as a grievance then he should..."

The complainant submits that Browne acted in a perfunctory and arbitrary manner in failing to talk to management about Soares' qualifications and acted in a similar manner in ignoring the job specification requir-



ing the on-the-job experience that Soares lacked. Thus, it is said that Browne whimsically or capriciously imposed his judgment on the grievance instead of being guided by the collective agreement, the job documents and the facts. Mr. McCullough was said to be equally culpable and for similar reasons. By failing to ascertain that management deemed both applicants qualified and by failing to observe the distinction in Article 10.5(f) between seniority and experience, he had dealt with the complaint in a perfunctory and arbitrary manner.

22. On the other hand, counsel for the respondent argued that the phrase "arbitrary, discriminatory or in bad faith" connotes a measure of malice or ill-will against the complainant or an unjustified favouring of someone else. Therefore to find a violation of section 60 it is not enough to conclude that the trade union was negligent. Furthermore, he suggested that there is no obligation on a trade union to attack the qualifications of another union member unless there is cogent evidence that the member's qualifications were fraudulent or created by favouritism. Only by this approach could the trade union fulfill its duty to both persons involved in such situations. Mr. Browne may have been timid in dealing with the complainant but if these principles are accepted his action could not possibly be characterized as arbitrary, it was submitted.

Turning to Mr. McCullough's actions, counsel submitted that while the complaint did not cover them they were fair. He viewed the matter de novo and concluded neither man was qualified. It is submitted that while he may have been wrong, McCullough's investigation was not arbitrary or capricious. Counsel observed that a heavy price would have to be paid if the Board is going to "second guess" these kinds of decisions. It was suggested that the grievance process is often manned by laymen who perform their official duties as well as their regular work function and all officials perform their duties under very difficult circumstances.

23. Section 60 reflects one of the great paradoxes in industrial relations. As legislatures of modern industrial jurisdictions have come to sanction collective action to protect individual employees from all-powerful employers, a second need has arisen to protect individuals from the collective so sanctioned to act on their behalf. One of the first recognitions of this need is found in

Steele v. Louisville 323 U.S. 210 decided under the Rail-Way Labor Act in the United States—a case which touched off a chain reaction of judicial, administrative and legislative responses over the following twenty years culminating in this Province by the enactment of section 60 in 1971. (See Carr, The Development of the Duty of Fair Representation Ontario (1968) Osgoode Hall L.J. 485, and Paliare, Tilting Against The Windmills: The Individual's Right To Arbitration (1970) 8 Osgoode Hall L.J. 485.) Section 60 enshrines legislatively the now famous elaboration of a trade union's duty of fair representation found in Vaca v. Sipes (1967) 386 U.S. 1971—that a trade union is prohibited from acting "in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the bargaining unit". This similarity is conveyed by the following excerpts culled from Mr. Justice White's opinion in the Vaca case:

"Under this doctrine, the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct."  
55 L.C. 11,731 at 18,294.

"Though we accept the proposition that a trade union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion, we do not agree that the individual employee has an absolute right to have his grievance taken to arbitration regardless of the provisions of the applicable collective bargaining agreement."  
55 L.C. 11,731 at 18,299.

"In administering the grievance and arbitration machinery as statutory agent of the employee, a union must, in good faith and in a nonarbitrary manner, make decisions as to the merits of particular grievances."  
55 L.C. 11,731 at 18,300.

24. Bad faith and discrimination are not being alleged in the facts at hand but their meaning is well worth a brief examination. The sequential use of the words may assist in elaborating the total meaning of the

duty and at the very least the particular application of each word demonstrates why this case is difficult. The prohibition against bad faith and discrimination describe conduct in a subjective sense—that an employee ought not to be the victim of the ill-will or hostility of trade union officials or of a majority of the members of the trade union. (See Adell, The Duty of Fair Representation - Effective Protection for Individual Rights in Collective Agreements? (1974) 25 Indus. Rel. 602, 611.) Bad faith and discrimination constitute the outer limits of majoritarianism and official action, preventing a trade union from singling out certain individuals for unfair treatment. This aspect of the duty is particularly important in discouraging discrimination on the basis of race, creed, colour, sex, etc., preventing internal trade union politics from erupting into forms of invidious conduct; and in prohibiting extreme forms of interpersonal breakdowns within a trade union. It is basic to a system based upon an exclusive bargaining agent. But as important as this subjective ill-will aspect of the duty is and as difficult as it may be to apply in some circumstances the most vexing and difficult application of the duty today is in giving meaning to the word "arbitrary".

25. In using the word arbitrary both the United States Supreme Court and the Legislature of this Province must have envisaged the duty constituting more than the simple castigation of subjective ill-will in that any other interpretation would render the use of this word superfluous. Thus, a well known rule of both statutory and contractual construction militates against the respondent's particular submissions in this regard. But where does this path lead? Some insight is gained from the Vaca case wherein Mr. Justice White juxtaposed the word arbitrary with the word "perfunctory" and observed that a trade union, "in a non arbitrary manner [must] make decisions as to the merits of particular grievances". It could be said that this description of the duty requires the exclusive bargaining agent to put "its mind" to the merits of a grievance and attempt to engage in a process of rational decision-making that cannot be branded as implausible or capricious.

26. This approach gives the word arbitrary some independent meaning beyond subjective ill-will, but, at the same time, it lacks any precise parameters and thus is extremely difficult to apply. Moreover, attempts at a more precise adumbration have to reconcile the appa-



rent consensus that it is necessary to distinguish arbitrariness (whatever it means) from mere errors in judgment, mistakes, negligence and unbecoming laxness. (See, for example, The Steel Company of Canada, Limited [1974] OLRB M.R. 392; Rutherford's Dairy Limited [1972] OLRB M.R. 240; Steinberg's Limited (Miracle Food Mart) [1972] OLRB M.R. 423. See also Flynn and Higgins, Fair Representation: A Survey of the Contemporary Framework and a Proposed Change in the Duty Owed to the Employee (1974) 8 Suffolk University, Rev. 1096, 1143; Clark, The Duty of Fair Representation: A Theoretical Structure (1973), 51 Tex. L. Rev. 1199, 1173.) The rationale of this consensus was canvassed by the Board in Ford Motor Company of Canada Limited [1973] OLRB M.R. 519 at para. 40:

"40. In deciding whether a union has violated the Act the standards to be applied are important. We recognize that union affairs are conducted for the most part by laymen. In some situations there are experienced full time officials of a trade union who conduct the union affairs; in other situations, the union affairs are conducted by employees in their spare time, while in yet other situations employees may be given a limited amount of paid time by their employers to engage in trade union matters. This Board does not decide cases on the basis of whether a mistake may have been made or whether there was negligence, nor is the standard based on what this Board might have done in a particular situation after having the leisure and time to reflect upon the merits. Rather, the standard must consider the persons who are performing the collective bargaining functions, the norms of the industrial community and the measures and solutions that have gained acceptance within that community; see Fisher v. Pemberton et al. 8 D.L.R. (3d) at 521 at p. 546."

27. There is thus a concern not to engage in what may well constitute uninformed second guessing about a process of decision-making that resides at the heart of the administration of the collective agreement or to impose unrealistic standards of conduct upon unpaid union officials who may lack the experience and time required to shoulder the burden. The parties to a collective agreement are the most familiar with the problems that must inevitably arise and decisions have

to be made "in a context of considerable conflict with delicate balances of mutual acceptability in a vortex of power, reason and persuasion". (See Hanslowe, *Individual Rights in Collective Labour Relations* (1959) 45 Cornell L. Rev. 25, 46.) It is argued that a more stringent definition of the duty would discourage the union from settling grievances thereby clogging the lifeline of the collective agreement. Further, because, in appropriate circumstances, an employer can be directed to respond to an alleged violation of the collective agreement which it may consider settled or withdrawn (and possible time barred) too stringent a standard might introduce an unhealthy uncertainty that would discourage or penalize reasonable reliance on a trade union's actions. In other words, it is felt that a more stringent standard would adversely affect the entire relationship between trade unions and employers to the detriment of all employees. Unfortunately, this limitation—one prevailing in the United States as well as in Ontario—necessarily leaves employees affected by mistakes and carelessness without a remedy under section 60. And it is this result that caused at least one commentator to lament that until recovery for ordinary negligence is permitted "employees will always be second class citizens in their industrial world". (Flynn and Higgins, *supra*, p. 1144.) And while we must say this latter observation lacks a perspective and concern for the overall health of collective bargaining referred to above, it is symptomatic of a feeling some employees may experience in particular circumstances.

On the other hand we do not believe, at least at this time, that all mistakes and careless conduct by trade union officials fall outside the scope of section 60. It may be difficult to elaborate the precise meaning of arbitrary representation in advance but, as noted above, the very use of the word suggests that some regulation of the quality of decision-making was intended. Accordingly at least flagrant errors in processing grievances—errors consistent with a "not caring" attitude—must be inconsistent with the duty of fair representation. An approach to a grievance may be wrong or a provision inadvertantly overlooked and section 60 has no application. The duty is not designed to remedy these kinds of errors. But when the importance of the grievance is taken into account and the experience and identity of the decision-maker ascertained the Board may decide that a course of conduct is so implausible, so summary or so reckless to

be unworthy of protection. Such circumstances cannot and should not be distinguished from a blind refusal to consider the complaint. However, each case must be decided on its own peculiar facts and it is clear that the duty is not going to be a fertile field for the individual adversely affected by less fragrant conduct.

28. How do these principles affect the facts at hand? Mr. Prinesdomu alleges that Ontario Hydro refused to award him the cable technician job contrary to the collective agreement and that, in considering this complaint, the respondent trade union represented him in an arbitrary manner. Two officials in the trade union considered his complaint—Mr. Browne and Mr. McCullough. Mr. Browne has the exclusive authority, both under the collective agreement and by trade union practice, to decide whether a complaint constitutes a grievance under the agreement. Mr. McCullough investigated Mr. Prinesdomu's appeal to Mr. Vincer, the respondent union's President. This appeal was not a formal appeal under the respondent's constitution. It was more in the nature of an informal process—a process by which individuals have voiced their dissatisfaction in the past. Thus a member does not have a contractual or legal right to have an original determination of a chief steward reviewed and reversed if wrong.

29. In assessing the complainant's grievance, Mr. Browne reviewed his application and related documents; spoke with fellow employees in the same job classification as Mr. Soares had occupied; reviewed the provisions of the collective agreement and the job documents; and attended a meeting with a number of management representatives and Mr. Prinesdomu. He did not review Mr. Soares' application apparently and he was unable to get detailed reasons for management's assessment of Mr. Soares' qualifications because Mr. Idiens refused to discuss them without a grievance being filed. The key portion in the job specification reads:

"Requires experience on the job to become familiar with basic fundamentals of low- and high-pressure cable systems, location of cable terminals and cable routes, safety rules and standard protection codes, and overall organization of the lines sections and the duties involved.



"A period of up to six years is considered necessary to gain this experience."

Mr. Browne admitted that Soares did not have such experience but he did not think all the experience specified was essential. It was his opinion that an employee only needed to possess the theory that would enable him to understand the actual functioning of the job and we understand that to this extent he did not think the job specification was that important. Counsel to the complainant characterized this position as arbitrary because it was argued that Mr. Browne had disregarded the job document and thereby disregarded the terms of the collective agreement.

30. This Board is unable to agree. We accept that the notice of vacancy must accord with the terms of the job document but it must be remembered that the job documents emanate from the Clerical-Technical Job Evaluation Manual—a manual that is incorporated into the collective agreement for the principal purpose of fairly determining the salary for weekly-salaried employees. Therefore, while the job documents should be important in fairly assessing whether an individual is qualified to perform a particular job (because he is getting paid to possess such experience), they may not constitute an absolute code in this regard. For example, a person with a poor work record might be judged unqualified although the job documents say nothing about this. Or a person may be able to handle the work without possessing a certain aspect of the required experience. In other words it is not clear that management must rigidly follow every detail of the job documents. Therefore Browne's interpretation that management, in exercising its powers under Article 9, could consider an employee qualified even though lacking one of the requirements of the job specification is not implausible—particularly if all he meant was that Soares required only a short familiarization period. When, added to this, one has regard to the fact that action on the complainant's behalf would in fact amount to action against another employee, it cannot be said that Browne in effect ignored the grievance or cavalierly denied it.

Mr. Browne was timid in dealing with Mr. Prinesdomu and this is an unfortunate trait for a chief steward to have. But we cannot conclude this interpersonal breakdown violates section 60.

Management refused to give Browne greater details until a grievance was filed and a trade union is under no duty to file a grievance regardless of merit. Here Browne believed he had enough information without further details. For the above reasons we are not prepared to interfere with this judgment.

31. In conducting his investigation, Mr. McCullough obtained the job documents; the letters dated August 19, 1974, September 6, 1974 and September 10, 1974; the applications of Mr. Prinesdomu and Mr. Soares; and applied his understanding of the collective agreement. He also claims to have conferred with Mr. Browne. He did not discuss the matter with any representative of management. As a result of reviewing the matter in this way, he concluded that neither the complainant nor Mr. Soares were qualified and therefore management was free to select who it wanted. Counsel to the complainant submitted that Mr. McCullough's failure to determine that management considered the complainant qualified demonstrates that he dealt with the complainant in an arbitrary manner.

32. We again must disagree. Mr. McCullough's interpretation of Article 10.5(f) was not implausible. He believed that only relevant experience was experience with a company similar to the operations of Ontario Hydro. The article does not say this and, judging from management's response in this case, his interpretation appears to be wrong. But the position is not without plausibility. However, had Mr. McCullough been considering this grievance in Mr. Browne's position, his investigation would not have been adequate. The details of the actions complained of are basic to assessing whether an employee has been dealt with contrary to the collective agreement and Mr. McCullough never determined that management had deemed Mr. Soares qualified.

But he was not dealing with the matter at the first instance. Rather, there appears to have been some confusion in his communications with Browne and he appears to have believed he had enough information in the letters of August 19, 1974, September 6, 1974 and September 10, 1974. The August 19, 1974 letter to the complainant, only by implication, indicates that management considered him qualified. Unfortunately, Mr. McCullough overlooked this implication but apparently relied upon this document in believing it was unnecessary to

contact management further. Therefore his response to the complainant was based upon a mistaken construction of the August 19, 1974 memorandum from Mr. Fraser coupled with his failure to ascertain all the relevant facts from Mr. Browne. Having regard to his experience and capacity in the trade union, the investigation might be characterized as careless but in the particular circumstances it cannot be branded as arbitrary. The complainant had no legal right to the review and we are not prepared to hold that a careless but gratuitous reconsideration of a complaint is in contravention of section 60. If there is no legal obligation to entertain his complaint, it is difficult to appreciate how section 60 could be used as a performance standard for the conduct.

33. We now wish to turn our attention to what amounts as the real basis to Mr. Prinesdomu's complaint. The trade union officials who dealt with him did not know him. There was therefore no reason or opportunity for bad faith or discrimination. But Mr. Browne told him that in his personal opinion seniority should be accorded more weight under the collective agreement, and a related but candid admission was Mr. McCullough's view that the union's job was not to attack a fellow member. These statements and the treatment he received have caused the complainant to believe that the trade union pursues a policy of refusing to grieve vacancy complaints where the more senior employee received the job regardless of qualifications. The representatives of the trade union denied this and the complainant did not adduce any evidence of other employees being treated in a similar way. We therefore have no hallmark evidence establishing a pattern. This allegation depends exclusively upon Browne's and McCullough's actions in the instant case. For the reasons outlined above we cannot find that the totality of Browne's and McCullough's conduct support such an inference. But it should be made clear that had the trade union considered the grievance in light of such a policy we would have characterized its actions as arbitrary because such a policy simply ignores rights flowing from a collective agreement. There are many times when the trade union must take a stance against employees who have been unfairly rewarded by management at the expense of other employees. In such circumstances trade unions cannot refuse to act.

34. Finally, counsel to the complainant relied upon the respondent's concession at the hearing that Mr. Soares was not qualified—a concession made by counsel to the respondent. While there was some subsequent confusion



at the second hearing as to whether the concession was made, after reviewing our notes we find that the concession was made. However, it does not assist the complainant. The Board's task is to assess the conduct of the union at the time it was representing Mr. Prinesdomu. The concession was not that Soares was unqualified and Mr. Browne and Mr. McCullough knew this at the time each acted. Rather, the concession was in the nature of statement of how counsel to the respondent was going to argue his case or what the respondent now accepted to be true. Counsel for the complainant did not attempt to "pin down" his understanding of the concession at the time it was made, and without such a clear stipulation against Mr. Browne's evidence we are not prepared to find that Browne believed Soares unqualified at the time he refused to file the grievance. Browne acted timidly and may have based his decision on an incorrect interpretation of the significance of the job specification. But he did not act in an arbitrary manner. The same can be said for Mr. McCullough. Accordingly the complaint is dismissed.









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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MAY 1975

BARGAINING AGENTS CERTIFIED DURING MAY

No Vote Conducted

6038-74-R: The Terrazzo, Tile & Marble Guild of Ontario, Inc. (Applicant) v. Ontario Provincial Conference of the Bricklayers, Masons and Plasterers' International Union of America (Respondent).

Unit: "all employers of terrazzo, tile and marble workers and their helpers in the province of Ontario; cement masons in the Townships of Graham, Louth, Clinton, Gainsborough in the County of Lincoln. All territory lying North of No. 20 Highway in the Townships of Pelham and Thorold in the County of Welland. Township of Niagara in the County of Lincoln. Townships of Stamford, Willoughby, Bertie in the County of Welland. Townships of Humberstone, Wainfleet, Crowland and all territory lying South of Highway No. 20 in Pelham and Thorold in the County of Welland. County of Welland. Townships of Moulton and Dunn in Haldimand County. The Counties of Lennox and Addington, except the Township of Richmond, the County of Frontenac, the Township of Leeds in the County of Leeds, the Township of Front of Escott, Front of Yonge, and Elizabethtown in the County of Leeds, and the Township of Augusta in the County of Grenville. The City of Peterborough, and the Town of Lindsay, and the Counties in which the said City and Town are situated. Townships of Cavan, and Hope in Durham County and the County of Haliburton, and the Townships of Alnwick, Hamilton, Haldimand, in the County of Northumberland. The County of Ontario, except the Townships of Pickering, Rama, Mara, and Thorah, County of Durham, except the Townships of Hope and Cavan. The Districts of Sudbury, Parry Sound, Nipissing, Temiskaming, Cochrane, and Kapuskasing. The Townships of Gramahe, Brighton, Murray, Percy, Seymour in the County of Northumberland, County of Hastings and Prince Edward. Township of Richmond in the County of Lennox and Addington; and resilient floor layers and their helpers in The County of Waterloo excepting that part of the Township of Waterloo lying South of a line from the South-West corner of the Township to a point one mile North of Hespeler, and the Township of North Dumfries. The Town of Preston to the Galt City Boundary and the Town of Hespeler. Townships Elma, Mornington, Wallace in the County of Perth. Townships Ashfield, East Wawanosh, West Wawanosh, Morris, Grey, Turnberry,

Howlock in the County of Huron; for whom the respondent has bargaining rights in the industrial, commercial and institutional; sewers, tunnels and watermains; roads; and heavy engineering sectors of the construction industry." (no employees in the unit). (HAVING REGARD TO THE FOREGOING).

6658-74-R: Mechanical Contractors Association, Kingston (Applicant) v. Sheet Metal Workers International Association, A.F.L.-C.I.O.-C.L.C., Local Union No. 269 (Respondent).

Unit: "all employers of journeymen sheet metal workers and registered apprentices for whom the respondent has bargaining rights in the County of Prince Edward, The Townships of Sidney, Thurlow and Tyendinaga in the County of Hastings, and the Counties of Lennox & Addington, Frontenac and Leeds in the residential and in the industrial, commercial and institutional sectors of the construction industry." (no employees in the unit).

6684-74-R: Windsor Sheet Metal Contractors Association (Applicant) v. Sheet Metal Workers International Association Union Local 235, Windsor Branch (Respondent).

Unit: "all employers of journeymen sheet metal workers and registered apprentices for whom the respondent has bargaining rights in the County of Essex in the industrial, commercial and institutional sector of the construction industry." (no employees in the unit). (FOR THE PURPOSE OF CLARITY THE BOARD DECLARED THAT THE CITY OF WINDSOR IS INCLUDED WITHIN THE COUNTY OF ESSEX.).

7468-74-R: International Chemical Workers Union (Applicant) v. A. Schulman Canada Ltd. (Respondent).

Unit: "all employees of the respondent at St. Thomas, save and except foremen, persons above the rank of foreman, office, sales and clinical staff." (18 employees in the unit).

7475-75-R: Service Employees Union, Local 210, A.F. of L., C.I.O., C.L.C., Windsor, Ontario (Applicant) v. Southampton Nursing Home Ltd. (Respondent).

Unit: "all employees of Southampton Nursing Home Ltd., Southampton, Ontario, save and except professional medical staff, registered nurses, supervisor, persons above the rank, of supervisor, office staff, dieticians and physiotherapists." (41 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7538-74-R: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Lido Drywall Limited (Respondent).

Unit: "all plasterers and plasterers' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit). (HAVING REGARD TO THE FOREGOING).

7547-74-R: Toronto Typographical Union No. 91 (Applicant) v. Alpha Graphics Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at the Municipality of Metropolitan Toronto employed in composing room work, save and except non-working foremen, persons above the rank of non-working foreman and students employed during the school vacation period." (46 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

7573-74-R: Canadian Union of Public Employees (Applicant) v. Regional Municipality of Sudbury (Respondent).

Unit: "all employees of the respondent at Pioneer Manor & Junior Citizens Day Care Centre in Sudbury, regularly employed for not more than 24 hours per week, save and except professional medical staff, charge nurses, assistant department heads and persons above the rank of assistant department head, teachers and day-care aides, registered nurses, office staff, students hired during the school vacation periods, and persons covered by a subsisting collective agreement between the respondent and Local 148 of the Canadian Union of Public Employees." (40 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0032-75-R: The Health Sciences Association of the Regional Municipality of Ottawa-Carleton (Applicant) v. Ottawa Crippled Children's Treatment Centre Inc. (Respondent).

Unit: "all paramedical employees of the respondent at Ottawa, save and except Department Heads and persons above the rank of Department Head." (7 employees in the unit). (HAVING REGARD TO THE INFORMATION).



0041-75-R: International Association of Bridge, Structural & Ornamental Ironworkers, Local 759 (Applicant) v. Stead & Lindstrom Limited (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in the District of Rainy River, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

0051-75-R: Service Employees Union, Local 204, Affiliated with AFL-CIO-CLC (Applicant) v. Versa-Care Centres of Ontario Limited (Respondent).

Unit: "all employees of the respondent employed at Dundurn Hall Nursing Home in Collingwood, Ontario, save and except supervisors and director of nurses, persons above the rank of supervisor and director of nurses, registered nurses, graduate nurses, office staff and students employed during the school vacation period." (30 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD NOTED THAT THE ACTIVITY DIRECTOR IS EXCLUDED FROM THE BARGAINING UNIT.).

0080-75-R: Canadian Union of Public Employees (Applicant) v. The Bruce County Board of Education (Respondent).

Unit: "all office and clerical employees of the respondent in Bruce County, save and except Department Heads; persons above the rank of Department Head; private secretaries to Director of Education, to Superintendents of Schools, and to Superintendent of Business and Finance; Chief Accountant and Office Manager; Payroll Officer; Attendance Counsellor; Instructional Teaching Personnel; and persons covered by existing collective agreements between the respondent and the Canadian Union of Public Employees and its Local 1330." (52 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT HEAD SECRETARIES DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE THEREFORE INCLUDED IN THE BARGAINING UNIT.).

0085-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. S.S. Kresge Company Limited (Respondent) v. Employee (Objector).

Unit: "all employees of the respondent at its distribution centre in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office staff, employees working for not more than 24 hours per week and students employed during the school vacation period." (68 employees in the unit).

0092-75-R: International Ladies' Garment Workers' Union (Applicant) v. Fashion Prints (Canada) division of Vendome Textile Industries Inc. (Respondent).

Unit: "all employees of the respondent in the plant of Fashion Prints (Canada) in Hawkesbury, save and except foremen persons above the rank of foreman, office, sales, shipping and receiving staff." (14 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0095-75-R: United Steelworkers of America (Applicant) v. Sealed Air of Canada Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, shipper-dispatcher, office and sales staff and students employed during the school vacation period." (35 employees in the unit).

0097-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Domcor Distribution Limited (Respondent).

Unit: "all employees of the respondent working at and out of Mississauga, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (7 employees in the unit).

0108-75-R: Service Employees Union, Local 204, Affiliated with A.F. of L. C.I.O., C.L.C. (Applicant) v. Peace Bridge Area Association for the Mentally Retarded (Respondent).

Unit: "all employees of the respondent at its Rosedale Residence at Fort Erie, save and except office and clerical employees, teaching and professional medical staff, supervisors, persons above the rank of supervisor, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (6 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0110-75-R: Ontario Nurses' Association (Applicant) v. County of Bruce General Hospital (Respondent) v. Group of Employees (Objectors).

Unit #1: "all registered and graduate nurses employed in a nursing capacity by the respondent at the County of Bruce General Hospital in Walkerton, save and except Head Nurses and persons above the rank of Head Nurse and persons regularly employed for not more than 24 hours per week." (32 employees in the unit).

Unit #2: "all registered and graduate nurses employed in a nursing capacity by the respondent at the County of Bruce General Hospital, Walkerton, and who are regularly employed for not more than 24 hours per week, save and except Head Nurses and persons above the rank of Head Nurse." (12 employees in the unit).

0114-75-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Teal Truck and Trailer Service Limited (Respondent).

- and -

0115-75-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Teal Manufacturing Limited (Respondent).

Unit: "all employees of the respondents in Windsor, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (40 employees in the unit).

0118-75-R: Retail Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Argyle Drivers, London Ltd. (Respondent).

Unit: "all employees of the respondent at London, save and except managers and persons above the rank of manager." (3 employees in the unit).

0119-75-R: United Steelworkers of America (Applicant) v. Seneca Wire of Canada Limited (Respondent).

Unit: "all employees of the respondent at Richmond Hill, save and except foremen, persons above the rank of foreman, office and sales staff, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (34 employees in the unit).



0123-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Lyle Vernon Armstrong and Cheryl Elaine Armstrong (Respondents).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondents in The District of Rainy River, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

0124-75-R: Labourers International Union of North America, Local 607 (Applicant) v. Prebuilt Industries, Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0127-75-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 141, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Domcor Distribution Limited (Respondent).

Unit: "all employees of the respondent working at or out of London, save and except foremen, persons above the rank of foreman, office and sales staff." (3 employees in the unit).

0129-75-R: Labourers' International Union of North America, Local 1059 (Applicant) v. Foley Potteries Limited, carrying on business as Royal Canadian Art Pottery Co. (Respondent).

Unit: "all employees of the respondent in Southampton, save and except supervisors, persons above the rank of supervisor, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation periods." (19 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0134-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Wilputte Canada Limited (Respondent).

Unit: "all employees of the respondent in that portion of the District of Algoma south of the 49th parallel of latitude engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

0138-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 249 (Applicant) v. Mirco Contractors Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Lennox and Addington, and the County of Frontenac and the Townships of Rear of Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0143-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Bot Construction (Canada) Limited (Respondent).

Unit: "all employees of the respondent in the Township of Hope, South Monaghan, Alnwick and all lands south thereof in the United Counties of Northumberland and Durham engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0144-75-R: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local #637 (Applicant) v. Lindsay Plate & Structural Steel Limited (Respondent).

Unit: "all employees of the respondent company at Grimsby, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period and persons covered under subsisting collective agreements." (25 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0146-75-R: The International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Union Electric Supply Co. Limited (Respondent).

Unit: "all employees of the respondent at Ottawa, save and except foremen, persons above the rank of foreman, office staff and outside salesmen." (29 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSE OF CLARIFICATION AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD NOTED THAT THE CASHIER AND THE TELEPHONE OPERATOR-RECEPTIONIST ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE GENERAL EXCLUSION OF OFFICE STAFF.).

0152-75-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local 647 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Twin Pines Dairy Co. Ltd. (Respondent).

Unit: "all office and clerical employees of the respondent at Windsor, Ontario, save and except supervisors and persons above the rank of supervisor." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0157-75-R: The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 736 (Applicant) v. The Lummus Company Canada Limited (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (31 employees in the unit).

0158-75-R: Christian Labour Association of Canada (Applicant) v. Arnold Steele & Associates Ltd. (Respondent).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (HAVING REGARD TO THE FOREGOING).

0160-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Beaver Underground Structures Limited (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

0162-75-R: The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 736 (Applicant) v. The Lummus Company Canada Limited (Respondent).

Unit: "all ironworkers and ironworkers' apprentices in the employ of the respondent in the Counties of Oxford, Perth,



Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (26 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT WELDERS WORKING AT THE TRADE OF IRON-WORKING ARE INCLUDED IN THE BARGAINING UNIT.).

0172-75-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Wegu Canada Inc. (Respondent).

Unit: "all employees of the respondent at Whitby, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (18 employees in the unit).

0173-75-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local 141, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Hardee Farms International Ltd. Ingersoll Division (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in the frozen food plant in Oxford County save and except foremen, foreladies, persons above the rank of foreman and forelady, office and sales staff, seasonal employees employed between June 1 and November 1, and employees who work regularly for not more than 24 hours a week." (41 employees in the unit). (IT IS TO BE NOTED THAT OFFICE STAFF INCLUDES THE TECHNICAL PERSONNEL OF THE RESPONDENT).

0181-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Ferrera Resco Limited (Respondent) v. Labourers International Union of North America, Local 607 (Intervener).

Unit: "all employees of the respondent in the District of Thunder Bay, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0185-75-R: Canadian Textile & Chemical Union (Applicant) v. Canada Carbon and Ribbon Company Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Brighton, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, students employed during the school

vacation period and persons regularly employed for not more than 24 hours per week." (19 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

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0187-75-R: Labourers International Union of North America, Local 607 (Applicant) v. Ferrara-Resco Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0195-75-R: Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Quality Painting and Decorating (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (HAVING REGARD TO THE FOREGOING).

0196-75-R: Christian Labour Association of Canada (Applicant) v. Klomps Electrical Contracting Limited (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the County of Lambton, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (HAVING REGARD TO THE FOREGOING).

0203-75-R: Labourers International Union of North America, Local #493 (Applicant) v. Valency Contracting Company Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent within a twenty mile radius of the North Bay post office, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0204-75-R: Labourers International Union of North America, Local 837 (Applicant) v. E. S. Martin Construction (Ontario) Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nas-sagaweya and the Town of Burlington in the County of Halton, save

and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0220-75-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. D & S Carpenters (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0221-75-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. F & M Carpenter (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0206-75-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. (Applicant) v. Olsonite Company Limited (Respondent).

Unit: "all office and clerical employees of the respondent at Windsor, save and except supervisors, persons above the rank of supervisor, sales representatives, secretary to the general manager and students employed during the school vacation period." (7 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0229-75-R: Labourers International Union of North America, Local 607 (Applicant) v. Begg & Daigle (1972) Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

0231-75-R: Sheet Metal Workers' International Association Local Union #540 (Applicant) v. Wilkinson Chutes (Canada) Limited (Respondent).



Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (6 employees in the unit).

0236-75-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. All Weather Carpentry (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

0239-75-R: Canadian Union of Public Employees (Applicant) v. Orillia Transportation Co. Limited (Respondent).

Unit: "all employees of the respondent at Orillia save and except general superintendents and person above the rank of general superintendent and office staff." (18 employees in the unit).

0240-75-R: Brewery, Soft Drink, Distillery, Distributors & Miscellaneous Workers, Local 1000, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Seven-Up (Ontario) Limited (Respondent).

Unit: "all employees of the respondent at Welland, Ontario, save and except supervisors, those above the rank of supervisor, merchandiser, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (10 employees in the unit).

0241-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. York Condominium Corporation No. 77 (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at 15 Vicora Linkway Apartments, Don Mills, Ontario, including resident superintendants, save and except property managers, persons above the rank of property manager, office and clerical staff." (3 employees in the unit).

0242-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. York Condominium Corporation No. 78 (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at Pavane Linkway condominium Apartment, Don Mills, including resident superintendants, save and except property managers, persons above the rank of property manager, office and clerical staff, and persons regularly employed for not more than twenty-four hours per week." (3 employees in the unit).

0253-75-R: International Association of Bridge, Structural & Ornamental Ironworkers, Local 759 (Applicant) v. Regional Steel Erectors (Respondent).

Unit: "all ironworkers and ironworkers' apprentices in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0254-75-R: International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW (Applicant) v. Purolator Limited (Respondent).

Unit: "all office employees of the respondent in the City of Mississauga, save and except supervisors, persons above the rank of supervisor, personnel assistant, salesmen, secretary to the President, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period, students employed under a co-operative training program and persons covered by existing collective agreements." (24 employees in the unit).

0257-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Ibex Developments Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario employed on residential construction, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0277-75-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Centennial Carpentry Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the

Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

0297-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. H. C. MacCallum Cont. Ltd. (Respondent).

Unit: "all employees of the respondent in the County of Simcoe, the District Municipality of Muskoka and the Township of Thorah and all land north thereof in the County of Ontario engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (15 employees in the unit).

#### Applications Certified Subsequent to Pre-Hearing Vote

7376-74-R: Textile Workers Union of America, AFL-CIO-CLC (Applicant) v. Corah Limited (Respondent).

Unit: "all employees of the respondent at its plant in Barrie, Ontario, save and except foremen, foreladies, persons above the rank of foreman, forelady, office and sales staff, plant nurse, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (132 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list	134
Number of persons who cast ballots	118
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	59
Number of ballots marked against applicant	58

7487-74-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers, Local 230 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Champlain Ready-Mixed Concrete Limited (Respondent) v. United Glass & Ceramic Workers of North America, AFL-CIO-CLC (Intervener).

Unit: "all employees of the company at its plant in Orillia and all employees at its depots at Highway #69, Parry Sound;



Ravencliff Road, Huntsville; and Highway #11, Bracebridge, save and except foremen, persons above the rank of foreman, office and sales staff." (25 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list	12
Number of persons who cast ballots	11
Number of ballots marked in favour of applicant	11
Number of ballots marked in favour of intervener	0

7488-75-R: Fuel, Bus, Limousine, Petroleum Drivers and Allied Employees, Local 352, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Drummond McCall & Co. Limited (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except assistant foremen, persons above the rank of assistant foreman, office and sales staff, watchmen and security staff, and students employed during the school vacation period." (130 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of persons on voters' list	123
Number of persons who cast ballots	121
Number of spoiled ballots	7
Number of ballots marked in favour of applicant	60
Number of ballots marked against applicant	54

0008-75-R: Warehousemen and Miscellaneous Drivers Local 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Bulk-Lift Systems Limited (Respondent).

Unit: "all employees of the respondent working at and out of Metropolitan Toronto save and except foremen, persons above the rank of foreman, dispatchers, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (68 employees in the unit).

Number of names of persons on voters' list		68
Number of persons who cast ballots	62	
Number of segregated ballots and not counted	5	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	41	
Number of ballots marked against applicant	15	

0075-75-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Cadbury Schweppes Powell Limited (Respondent).

Unit: "all employees of the respondent at its chocolate confectionery operation at Whitby, save and except supervisors, persons above the rank of supervisor, office, clerical and technical and sales staff, plant nurse, students employed during the school vacation period." (117 employees in the unit).

Number of names of persons on voters' list		116
Number of persons on revised voters' list	115	
Number of persons who cast ballots	110	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	92	
Number of ballots marked against applicant	17	

0104-75-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Electrolite, Division of LCA Canada Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (77 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list		76
Number of persons who cast ballots	74	
Number of spoiled ballots	5	
Number of ballots marked in favour of applicant	59	
Number of ballots marked against applicant	10	

Applications Certified Subsequent to Post-Hearing Vote

7319-74-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Kingston (Respondent).

Unit: "all employees of the respondent on the Township of Kingston, save and except superintendents, persons above the rank of superintendent, office, clerical and technical staff." (38 employees in the unit).

Number of names of persons on voters' list		63
Number of persons who cast ballots	36	
Number of ballots marked in favour of applicant	34	
Number of ballots marked against applicant	2	

7326-74-R: Service Employees Union Local 478 Affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. The Muskoka Board of Education (Respondent).

Unit: "all employees of the respondent in the County of Muskoka, regularly employed for not more than twenty-four hours per week engaged in maintenance and cafeteria services and plant operations save and except supervisors, those above the rank of supervisor and office staff." (40 employees in the unit).

Number of names of persons on voters' list		44
Number of persons who cast ballots	27	
Number of ballots marked in favour of applicant	24	
Number of ballots marked against applicant	3	

7394-74-R: Canadian Union of Public Employees (Applicant) v. Scarborough Public Library Board (Respondent).

Unit: "all graduate Librarians employed by the respondent for not more than 24 hours per week and all persons attending a Library School and employed as Student Librarians by the respondent for not more than 24 hours per week." (15 employees in the unit).



Number of names of persons on revised voters' list		21
Number of persons who cast ballots	15	
Number of ballots marked in favour of applicant	13	
Number of ballots marked against applicant	2	

7400-74-R: Canadian Union of Public Employees (Applicant) v. Temiskaming Hospitals (Respondent).

Unit: "all lay employees of the employer at Haileybury and New Liskeard, Ontario, who are regularly employed for not more than twenty-four hours per week save and except Professional medical staff, Graduate nursing staff, Undergraduate nurses, Graduate pharmacists, Undergraduate pharmacists, Graduate Dietitians, Student Dietitian, Technical Personnel, Department Heads, persons above the rank of Department Head, Chief Engineer, matrons, watchmen, office staff, and persons covered by a subsisting collective agreement between the Employer and the Canadian Union of Public Employees and its Local 904." (41 employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THAT "TECHNICAL PERSONNEL" MEANS EMPLOYEES EMPLOYED IN PHYSIO THERAPY, OCCUPATIONAL THERAPY, LABORATORY, RADIOLOGY, PATHOLOGY, PHARMACY, CARDIOLOGY, AND PSYCHOLOGISTS, ELECTRIC SHOCK THERAPISTS, AND ELECTROENCEPHALOGRAPHISTS.").

Number of names of persons on revised voters' list		34
Number of persons who cast ballots	9	
Number of ballots marked in favour of applicant	8	
Number of ballots marked against applicant	1	

7401-74-R: Ontario Nurses' Association (Applicant) v. Victoria Hospital Corporation (Respondent).

Unit: "all registered and graduate nurses in the employ of the respondent at London, Ontario engaged in a nursing capacity and regularly employed for not more than twenty-four hours per week save and except head nurses, persons above the rank of head nurse and persons covered by subsisting collective agreements." (216 employees in the unit).

Number of names of persons on voters' list	161
Number of persons who cast ballots	54
Number of ballots marked in favour of applicant	53
Number of ballots marked against applicant	1

7502-74-R: Amalgamated Clothing Workers of America (Applicant) v. National Drapery Company Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, foreladies and persons above the rank of foreman, forelady, supervisors, truckdrivers, installers, sales and office staff, persons who regularly employed for not more than 24 hours per week and students employed during vacation period." (180 employees in the unit).

Number of persons on voters' list	188
Number of persons who cast ballots	152
Number of spoiled ballots	4
Number of ballots marked in favour of applicant	96
Number of ballots marked against applicant	52

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING MAY

##### No Vote Conducted

6967-74-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. O-Be-Sh-Ko-Ka Ear Falls Metis & Non Status Indian Association (Respondent). (9 employees).

7059-74-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Preston Sand and Gravel Company Limited (Respondent) v. Christian Labour Association of Canada (Intervener). (16 employees).

7073-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Parklawn Construction A Division of Parklawn Sodding Ltd. (Respondent). (8 employees).

7271-74-R: Local 304 - International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America -

C.L.C. (Applicant) v. Chateau-Gai Wines Limited (Respondent).  
(26 employees).

7581-74-R: Canadian Union of Public Employees (Applicant) v.  
Regional Municipality of Sudbury (Respondent). (16 employees).

0033-75-R: Laundry, Dry Cleaning & Dye House Workers' Inter-  
national Union Local 351, Hotel and Club Workers Division  
(Applicant) v. Prince Hotel Toronto (Respondent). (409 employees).

0054-75-R: Service Employees Union, Local 204 affiliated with  
AFL-CIO-CLC (Applicant) v. Versa-Care Centres of Ontario Limited  
(Respondent). (2 employees).

0120-75-R: Amalgamated Meat Cutters and Butcher Workmen of  
North America (Applicant) v. F B I Foods Ltd. (Respondent).

Unit: "all employees of the respondent at its plant in Trenton,  
save and except supervisors, persons above the rank of supervisor,  
security guards, highway drivers, quality control technicians,  
office and sales staff, persons regularly employed for not more  
than twenty-four hours per week and students employed during the  
school vacation period." (18 employees in the unit). (HAVING  
REGARD TO THE REPRESENTATIONS OF THE PARTIES).

0191-75-R: Labourers International Union of North America Local  
#493 (Applicant) v. Bandiera & Associates Toronto Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent  
within a twenty mile radius of the North Bay post office, save  
and except non-working foremen and persons above the rank of  
non-working foreman." (3 employees in the unit).

0294-75-R: The Labourers' International Union of N.A., Local  
1089 (Applicant) v. Alnor Earth Moving Limited (Respondent).  
(3 employees).

#### Certification Dismissed Subsequent to Pre-Hearing Vote

6852-74-R: Amalgamated Meat Cutters and Butcher Workmen of  
North America, AFL-CIO-CLC (Applicant) v. Hostess Food Products  
Limited (Respondent).

Voting Constituency: "All employees of the respondent at Cam-  
bridge (Preston) Ontario, save and except Group Leaders, persons  
above the rank of Group Leader, office and Sales Staff, persons  
regularly employed for not more than twenty-four hours per week



and students employed during the school vacation period." (580 employees).

Number of names of persons on voters' list		532
Number of names of persons on revised voters' list		528
Number of persons who cast ballots		494
Ballots segregated and not counted	2	
Number of spoiled ballots	9	
Number of ballots marked in favour of applicant	223	
Number of ballots marked against applicant	260	

7205-74-R: United Cement, Lime and Gypsum Workers International Union, A.F.L., C.I.O., C.L.C. (Applicant) v. Work Wear Corporation of Canada Ltd. (Respondent).

Voting Constituency: "All employees of the respondent working at or out of the City of Barrie, save and except supervisors, persons above the rank of supervisor, office and sales staff, stockroom staff, persons regularly employed for not more than twenty-four hours per week and students." (11 employees).

Number of names of persons on list as originally prepared by employer		11
Number of persons who cast ballots	10	
Number of ballots marked in favour of applicant	5	
Number of ballots marked against applicant	5	

0059-75-R: Textile Workers Union of America, AFL-CIO-CLC (Applicant) v. Sonoco Limited (Respondent).

Voting Constituency: "All employees of the respondent at its plants in Brantford, Ontario, save and except foremen, foreladies, persons above the rank of foreman or forelady, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period and students employed pursuant to a co-operative educational program." (183 employees).

Number of names of persons on revised voters' list	173
Number of persons who cast ballots	168
Number of ballots segregated and not counted	1
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	28
Number of ballots marked against applicant	137

Certification Dismissed Subsequent to Post-Hearing Vote

7343-74-R: International Union of Operating Engineers, Local 793 (Applicant) v. The Corporation of the Township of Normanby (Respondent).

Voting Constituency: "All regular employees of the respondent in the Township of Normanby, Grey County, save and except foremen, persons above the rank of foreman and office staff." (7 employees).

Number of names of persons on voters' list	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voters' list	4
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	1
Number of ballots marked against applicant	2

7395-74-R: Canadian Food and Allied Workers Local Union 175, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Darrigo's Supermarkets Limited (Respondent).

Unit: "all employees of the respondent at its retail stores in Metropolitan Toronto, save and except assistant store managers, persons above the rank of assistant store manager, persons employed in the respondent's meat department, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (47 employees in the unit).

Number of names of persons on revised voters' list		27
Number of persons who cast ballots	27	
Number of spoiled ballots	3	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	17	

7518-74-R: Retail Clerks International Association (Applicant) v. Waekens Krochak Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all licensed motor vehicle salesmen in the Employ of the respondent at Chatham, save and except managers and persons above the rank of manager." (6 employees in the unit).

Number of names of persons on voters list		6
Number of persons who cast ballots	6	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	6	

7521-74-R: Retail Clerks International Association (Applicant) v. Maple City Ford Sales Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all licensed motor vehicle salesmen of the Respondent at Chatham, Ontario, save and except managers and persons above the rank of manager." (5 employees in the unit).

Number of names of persons on revised voters' list		2
Number of persons who cast ballots	2	
Number of ballots marked in favour of applicant	0	
Number of ballots marked in against applicant	2	

7523-74-R: Retail Clerks International Association (Applicant) v. Sandy Elliot Motors Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all licensed motor vehicle salesmen of the Respondent at Chatham, Ontario, save and except managers and persons above the rank of manager." (3 employees in the unit).



Number of names of persons on voters' list		3
Number of persons who cast ballots	3	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	3	

7524-74-R: Retail Clerks International Association (Applicant) v. Tim Wilkins Pontiac Buick Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all motor vehicle salesmen of the respondent at Chatham, save and except managers and persons above the rank of manager." (4 employees in the unit).

Number of names of persons on voters' list		4
Number of persons who cast ballots	4	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	4	

#### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MAY

0096-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Domcor Enterprises (Ontario) Ltd. (Respondent). (7 employees).

0125-75-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 666 (Applicant) v. Wainfleet Plumbing Niagara Limited (Respondent). (7 employees).

0126-75-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local 141 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Domcor Enterprises (Ontario) Ltd. (Respondent). (2 employees).

0139-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. York Condominium Corporation (Number 78) (Respondent). (3 employees).

0140-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. York Condominium Corporation (Number 43) (Respondent). (4 employees).

0141-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. York Condominium Corporation (Number 77) (Respondent). (3 employees).

0159-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Roy Construction & Supply Limited/Roy Construction (North Bay) Limited (Respondent). (4 employees).

0161-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Bot Construction (Canada) Limited Clarkson Construction Company Limited (Respondent). (13 employees).

0166-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Flemingdon Park Condominiums or York Condominium Corporation (#H-190) (#165) (#146) (Respondent). (12 employees).

0167-75-R: Retail Clerks Union Local 486 (Applicant) v. Radio Shack Limited (Respondent). (16 employees).

0180-75-R: Service Employees Union Local 268 (Applicant) v. Beacon Hill Lodges of Canada Limited, Thunder Bay, Ontario (Respondent). (30 employees).

0192-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Sam-Sor Enterprises Inc. (Respondent). (4 employees).

0194-75-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 666 (Applicant) v. Wainfleet Plumbing Niagara Limited (Respondent). (6 employees).

0212-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Armbro Construction (Respondent). (2 employees).

0227-75-R: Teamsters Local 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. C. A. Pitts General Contractor Ltd. (Respondent). (17 employees).

0228-75-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Elwood Robinson Limited (Respondent). (50 employees).

0237-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Atwood Conduit & Cable Limited (Respondent). (4 employees).

0280-75-R: Brewery, Soft Drink, Distillery, Distributors & Miscellaneous Workers, Local 1000, affiliated with International Brotherhood of Teamsters (Applicant) v. Seven - Up (Ontario) Ltd. (Burlington Branch) (Respondent). (10 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED  
OF DURING MAY

7316-74-R: Merlyn Stoate (Applicant) v. Canadian Union of Public Employees, Local 1167 (Respondent). (GRANTED).

Unit: "all office employees of the Corporation of the County of Victoria, save and except clerk-treasurer, assistant clerk-treasurer, deputy treasurer, assessment commissioner, safety inspector, emergency measures co-ordinator, county engineer, engineering assistant, director of welfare and persons regularly employed for not more than twenty-four hours per week." (12 employees in the unit).

Number of names of persons on voters' list	12
Number of persons who cast ballots	12
Number of ballots marked in favour of respondent	3
Number of ballots marked against respondent	9

7446-75-R: L. James Wark (Applicant) v. Office and Professional Employees International Union, Local 131 AFL-CIO, C.L.C. (Respondent) v. Purolator Limited (Intervener). (GRANTED).

Unit: "all office employees of Purolator Limited in the Town of Mississauga, save and except supervisors, persons above the rank of supervisor, personnel assistant, salesmen, one secretary to the President, one secretary to the General Manager, persons regularly employed for not more than twenty-four hours per week, students employed during the school vacation period, students employed under a co-operative training program and persons covered by subsisting collective agreements." (25 employees in the unit).



Number of names of persons on voters' list		24
Number of persons who cast ballots	22	
Number of ballots marked in favour of respondent	3	
Number of ballots marked against respondent	19	

7528-74-R: John D. Marshall and Joseph J. Marshall (Applicants) v. International Brotherhood of Electrical Workers, Local Union 2345 (Respondent) v. Listowel Public Utilities Commission (Intervener). (3 employees). (GRANTED).

7545-74-R: Johan Bleay (Applicant) v. London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Respondent) v. Bonnie Braw Nursing Ltd. (Intervener). (GRANTED).

Unit: "all full time employees who are employed at Bonnie Brae Nursing Home Limited, at Tavistock, Ontario, save and except foremen, supervisors, persons above the rank of foreman and supervisor, professional nursing staff, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (12 employees in the unit).

Number of names of persons on voters' list		35
Number of persons who cast ballots	29	
Number of ballots marked in favour of respondent	0	
Number of ballots against respondent	29	

0002-75-R: Merlyn Stoate (Applicant) v. Canadian Union of Public Employees, Local 1167 (Respondent). (12 employees). (GRANTED).

0079-75-R: The Office Employees, Silverwood Dairies, 300 Falconbridge Road, Sudbury, Ontario (Applicant) v. Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Respondent) v. Silverwood Dairies, Division of Silverwood Industries Limited - Sudbury Branch (Intervener). (2 employees). (GRANTED).

0147-75-R: Office Staff, Huntsville District Memorial Hospital (Applicant) v. Service Employees Union, Local 478 Affiliated with A.F. of L., C.I.O., C.L.C. (Respondent). (10 employees). (DISMISSED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF  
DURING MAY

7575-74-R: Ontario Nurses' Association (Applicant) v. Victoria Hospital Corporation (Respondent). (GRANTED).

0216-75-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Parkinson Cowan (Canada) Limited (Respondent) v. Chatham General Workers Union, Local 330 of the Canadian Labour Congress (Predecessor Trade Union). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF  
DURING MAY

0198-75-U: Stewart & Hinan Contractors Limited (Applicant) v. 1. Brick layers, Stone masons and Plasterers International Union of America Local 12 Kitchener 2. Brian Stickland 3. The Wood, Wire and Metal Lathers International Union Local 562 4. Robert Evans 5. Wayne Garnet McKay 6. Johann Fetch 7. Bill Buck 8. Bruce Madill 9. Don Connors (Respondents) v. Christian Labour Association of Canada (Party added by the Board). (WITHDRAWN).

0199-75-U: Stewart & Hinan Contractors Limited (Applicant) v. 1. Local Union 527 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada 2. Thomas Crystal 3. Jack Porter 4. W. Koehn 5. Allan Kidd 6. Alex Brandemule 7. Patrick Roach 8. The Wood, Wire and Metal Lathers International Union Local 562 9. Robert Evans 10. Wayne Garnet McKay 11. Joann Feth 12. Bill Buck 13. Bruce Madill 14. Don Connors (Respondents) v. Christian Labour Association of Canada (Party Added by the Board). (WITHDRAWN).

0200-75-U: Stewart & Hinan Contractors Limited (Applicant) v. 1. Local Union 804 of the International Brotherhood of Electrical Workers 2. Bill Collier 3. Harry Holloway 4. Russ Schildroth 5. Tim Brown 6. John Raepple 7. Walter Melynychuk 8. The Wood, Wire and Metal Lathers International Union Local 562 9. Robert Evans 10. Wayne Garnet McKay 11. Johann Feth 12. Bill Buck 13. Bruce Madill 14. Don Connors (Respondents) v. Christian Labour Association of Canada (Party added by the Board). (WITHDRAWN).

0208-75-U: The Windsor Electrical Contractors Association (Applicant) v. International Brotherhood of Electrical Workers Local Union #773 - Unit #2, Mr. Neil McLean, Business Manager (Respondent). (WITHDRAWN).

0209-75-U: Windsor Electrical Contractors Association (Applicant) v. International Brotherhood, of Electrical Workers, Local Union #773 - Unit #1 (Respondent). (WITHDRAWN).

0225-75-U: The Electrical Power Systems Construction Association and Ontario Hydro (Applicant) v. Ontario Allied Construction Trades Council, and the United Brotherhood of Carpenters and Joiners of America and Ali, K; Anderson, C; Antoine, D; Arra, V; Asto, S; Bailey, H; Bailey, Herbert; Beers, W; Bergs, G; Beros, P; Black, S; Bodnieks, D; Bressan, E; Brookes, T; Brown, G; Browne, D; Burke, J; Bryan, F; Campbell, S; Case, L; Chalmers, T; Christensen, S; Christensen, H; Coppola, G; Corriveau, L; Daley, L; Darrell, H; Davidson, R; Dreifelds, V; Drodge, B; Ellery, B; Ellery, G; Ender, W; Fearon, L; Fraggoulis, A; Fraser, K; George, W; Girard, H; Goldmanis, R; Gosse, J; Grawert, W; Greaves, C; Gribbon, P; Hellesman, R; Hendrickson, G; Ivan, A; Kelloway, F; Kelly C; Kelly, O; Kolbrich, J; Laende, M; Lallion, C; Lanteigne, V; Levesque, A; Lindo, S; Malarchuk, N; Martin, A; Margol, J; Martin, B; Mazzolini, R; Miguel D; Milczek, S; Mitchell, K; Noel, G; Noel H; Pankiw, F; Petersen, F; Pigeon, G; Pinnock, J; Pigeon, J; Pigeon, R; Robichaud, R; Roddick, W; Rondeau, J; Shular, W; Snow, J; Soady, J; Tamburino, A; Taylor, R; Tourigny, G; Veidemanis, V; Vokey, I; Walters, C; Williams, E; Yeomanson, O; Aspray, R; Babcock, M; Bailey, J; Baptista, L; Barons, John; Bellissimo, S; Berzapa, V; Biason, S; Bishop, A; Blencowe, J; Bond, A; Brown, R; Caron, L; Campbell, N; Caron, O; Chambers, R; Christensen, K; Daley, B; Dare, M; Ferriera, J; Grant, V; Haley, M; Hall, H; Hawke, P; Henry, H; Hitchman, W; Hussey, K; Kelle, P; Kelly, M; Kennedy, C; Keogh, T. Paul; Kondrats, V; Kozak, J; Kurppa, M; Laamanen, N; Lemieux, M; Magueta, J; McGraw, F; Mercier, P; Moore, R; Morrison, U; Noviello, P; Paul, M; Persaud, H; Pinch, H; Portelance, E; Purwins, A; Ramsay, J; Randel, J; Ricketts, J; Rowe, N; Saito, N; Stewart, R; Thompson, G; Thompson, M; Tippet, W; Troelitzsch, K; Trozenko, P; Warnock, M; Wisniewski, W; Yade, S; Zahorchak, A, (Respondents) v. The Wood, Wire & Metal Lathers' International Union, Local 562 (Intervener). (DIRECTION).

0226-75-U: The Wood, Wire & Metal Lathers' International Union, Local 562 (Applicant) v. United Brotherhood of Carpenters and Joiners of America, The Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227, 3233 of the United Brotherhood of Carpenters and Joiners of



America, P. Robichaud, John Carruthers, Donald Archer, Joseph Campbell and Edward Stewart (Respondents). (DIRECTION).

0246-75-U: A. G. Spalding & Bros. of Canada Limited (Applicant) v. See Appendix A (Respondents). (DISMISSED).

0247-75-U: A. G. Spalding & Bros. of Canada Limited (Applicant) v. The International Woodworkers of America Local 2-233 (Respondent). (DISMISSED).

0249-75-U: Emanuel Products Limited (Applicant) v. Frank Lavorato, et al (See attached Schedule) (Respondent). (WITHDRAWN).

0271-75-U: The Lummus Company of Canada Limited (Applicant) v. Rudy Sabourin, et al (See Schedule A attached hereto) (Respondents). (WITHDRAWN).

0305-75-U: First Place, Hamilton (Applicant) v. Hamilton Building Trades Council; United Brotherhood of Carpenters and Joiners of America, Local 18; International Brotherhood of Electrical Workers, Local 105; International Association of Bridge, Structural and Ornamental Iron Workers, Local 736; and International Brotherhood of Teamsters, Chauffeurs and Warehousemen, Local 879 (Respondents). (DIRECTION).

#### APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MAY

7423-74-U: Service Employees Union, Local 204 (Applicant) v. Modern Building Cleaning Limited, a Division of Dustban of Canada Limited; Michael Horgan, David Simas, Tony Simas and Eduarda Tavares (Respondents). (WITHDRAWN).

7579-74-U: Office and Professional Employees International Union (Applicant) v. Weingarden & Hawrish (Respondent). (DISMISSED).

0030-75-U: The Hotel and Club Employees' Union, Local 299 of the Hotel and Restaurant Employees' and Bartenders' International Union, affiliated with the American Federation of Labour and Congress of Industrial Organizational (A.F.L.-C.I.O.), Canadian Labour Congress, Ontario Federation of Labour and the Labour Council of Metropolitan Toronto (Applicant) v. Adath Catering Company (A Division of Michael Firestone Services Limited) (Respondent). (WITHDRAWN).

0040-75-U: United Steelworkers of America (Applicant) v. Reynolds Extrusion Company Limited. (Respondent). (GRANTED).

0083-75-U: Reed Ltd. (Applicant) v. F. Alfino et al, and N. Antinolfi et al (Respondents). (WITHDRAWN).

0091-75-U: Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Norfolk (Respondent). (WITHDRAWN).

0098-75-U: United Steelworkers of America (Applicant) v. Baycoat Limited (Respondent). (WITHDRAWN).

0113-75-U: Ontario Nurses' Association (Applicant) v. The Lambton Health Unit (Respondent). (WITHDRAWN).

0184-75-U: Toronto Typographical Union No. 91 (Applicant) v. Alpha Graphics Limited (Respondent). (WITHDRAWN).

0245-75-U: A. G. Spalding & Bros. of Canada Limited (Applicant) v. The International Woodworkers of America Local 2-233 (Respondent). (WITHDRAWN).

0248-75-U: Emanuel Products Limited (Respondent) v. Frank Lavorato, et al (Respondents). (WITHDRAWN).

#### COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF

##### DURING MAY

7106-74-U: United Steelworkers of America (Complainant) v. Fielding Lumber Company Limited (Respondent).

- and -

7131-74-U: United Steelworkers of America (Complainant) v. Fielding Lumber Company Limited (Respondent). (GRANTED).

7196-74-U: Walter Prinesdomu (Complainant) v. Canadian Union of Public Employees Local 1000 - Ontario Hydro Employees Union (Respondent). (DISMISSED).

(1975) 2 OLRB M.R. - PAGE 444.

7337-74-U: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Complainant) v. York Bag Company Limited, Kroy Pane Plastics Limited & Rigidflex Canada Limited (Respondents).

- and -

7361-74-U: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Complainant) v. York Bag Company Limited, Kroy Pane Plastics Limited & Rigidflex Canada Limited (Respondents).

- and -

7364-74-U: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Complainant) v. York Bag Company Limited, Kroy Pane Plastics Limited & Rigidflex Canada Limited (Respondents).

- and -

0004-75-U: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Complainant) v. York Bag Company Limited, Kroy Pane Plastics Limited & Rigidflex Canada Limited (Respondents). (DISMISSED).

(1975) 2 OLRB M.R. - PAGE 435.

7379-74-U: Hank C. Maass (Complainant) v. Sheet Metal Workers, International Association, Local Union No. 30 (Respondent) v. Canadian Rogers Eastern Limited (Intervener).

- and -

7380-74-U: Hank C. Maass (Complainant) v. Canadian Rogers Eastern Limited (Respondent). (DISMISSED).

(1975) 2 OLRB M.R. - PAGE 406.

7424-74-U: Service Employees Union, Local 204 (Complainant) v. Modern Building Cleaning Limited, a Division of Dustbane of Canada Limited (Respondent). (WITHDRAWN).

7510-74-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Peter Gorman Ltd. (Respondent). (WITHDRAWN).

7527-74-U: Francisco Gonzalez (Complainant) v. Local 195, U.A.W. (Respondent). (WITHDRAWN).

7535-74-U: International Ladies' Garment Workers' Union (Complainant) v. Petite Originals Co. Ltd. (Respondent). (GRANTED).

0015-75-U: Service Employees Union, Local 204 (Complainant) v. Modern Building Cleaning Limited, a Division of Dustbane of Canada Limited (Respondent). (WITHDRAWN).

0029-75-U: Canadian Union of Operating Engineers (Complainant) v. Polygon Industries Limited (Respondent). (WITHDRAWN).

0061-75-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Bulk Lift Systems Ltd. (Respondent). (WITHDRAWN).



0089-75-U: Service Employees Union, Local 210, A.F. of L., C.I.O., C.L.C. (Complainant) v. Southampton Nursing Home Ltd. (Respondent). (WITHDRAWN).

0116-75-U: Toronto Typographical Union No. 91 (Complainant) v. Alpha Graphics Limited (Respondent). (WITHDRAWN).

0117-75-U: Toronto Typographical Union No. 91 (Complainant) v. Alpha Graphics Limited (Respondent). (WITHDRAWN).

0151-75-U: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Twin Pines Dairy Co. Ltd. (Respondent). (WITHDRAWN).

0154-75-U: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Twin Pines Dairy Co. Ltd. (Respondent). (WITHDRAWN).

0168-75-U: Retail Clerks Union, Local 486 (Complainant) v. Radio Shack (Respondent). (WITHDRAWN).

0171-75-R: Armando Belo (Complainant) v. International Union of Operating Engineers (Respondent). (WITHDRAWN).

0177-75-U: Toronto Typographical Union No. 91 (Complainant) v. Alpha Graphics Limited (Respondent). (WITHDRAWN).

0183-75-U: R. Glenlundy (Complainant) v. Sheet Metal Workers' International Association Local Union 537 and Mr. Fletcher (Respondents). (WITHDRAWN).

0190-75-U: Toronto Typographical Union No. 91 (Complainant) v. Alpha Graphics Limited (Respondent). (WITHDRAWN).

0210-75-U: Amalgamated Meat Cutters and Butcher Workmen of North America, A.F.L.-C.L.C.-C.L.C. (Complainant) v. Bittner Packers Limited (Respondent). (WITHDRAWN).

0214-75-U: Office & Professional Employees International Union (Complainant) v. Canadian Shipbuilding & Engineering Limited (Respondent). (WITHDRAWN).

0223-75-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Complainant) v. Teal Truck and Trailer Service Limited (Respondent). (WITHDRAWN).

APPLICATION UNDER SECTION 39 DISPOSED OF DURING MAY

0007-75-M: Allison Hopman (Applicant) v. Canadian Union of Public Employees, Local 786 (Respondent Trade Union) v. St. Joseph's Hospital, Hamilton, Ontario (Respondent Employer). (GRANTED).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

0049-75-M: Ontario Nurses' Association (Trade Union) v. Toronto East General and Orthopaedic Hospital Inc. (Employer). (GRANTED).

0056-75-M: Hotels, Clubs, Restaurants, Taverns Employees Union, Local 261 (Trade Union) v. Carleton Towers Hotel (Employer). (GRANTED).

0057-75-M: Hotels, Clubs, Restaurants, Taverns Employees Union, Local 261, AFL-CIO and CLC (Trade Union) v. Talisman Motor Inn, Ottawa, Ontario (Employer). (GRANTED).

0071-75-M: Ontario Nurses' Association (Trade Union) v. Toronto East General and Orthopaedic Hospital Inc. (Employer). (GRANTED).

0072-75-M: The International Association of Machinists and Aerospace Workers (AFL-CIO) (CLC) and its Local Lodge No. 2183 (Trade Union) v. Clark Equipment of Canada, Division of BLH Canada Ltd. (Employer). (GRANTED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF

DURING MAY

7580-74-M: The Ottawa Newspaper Guild, Local 205 of The Newspaper Guild (Trade Union) v. The Citizen (a division of Southam Press Limited) (Employer). (TERMINATED).

0006-75-M: The Canadian Union of Public Employees, Local 87 (Trade Union) v. City of Thunder Bay (Employer). (AFFIRMATIVE).

0155-75-M: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F. of L., C.I.O., C.L.C. (Trade Union) v. St. Raphael's Nursing Homes Limited (Employer). (AFFIRMATIVE).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

7489-74-R: Sheet Metal Workers' International Association, Local Union #47 (Applicant) v. L. A. Graves Building Services Limited (Respondent). (REQUEST DENIED).

(1975) 2 OLRB M.R. - PAGE 415.

7564-74-R: Teamsters Local 938, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. The Clorox Company of Canada, Ltd. The Martin-Brower Company Division (Respondent) v. Group of Employees (Objectors). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

7483-74-U: Mr. Ronald George Rodgers (Complainant) v. Canadian Union of Operating Engineers, Local 101 (Respondent Trade Union) v. The Toronto Western Hospital (Intervener). (REQUEST DENIED).



APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - TERMINATION

5993-74-R: Steven Clement, et al (Applicant) v. The Civil Service Association of Ontario, Inc. (Respondent) v. Muskoka Ambulance Service (Intervener). (REQUEST DENIED).

7035-74-R: Ross Scolaro (Applicant) v. Canadian Food and Allied Workers, and Local Unions 175 and 633, chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, CLC (Respondent) v. Darrigo's Supermarkets Limited (Intervener). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - JURISDICTIONAL

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3902-73-JD: The International Association of Bridge, Structural and Ornamental Ironworkers, Local 721 (Complainant) v. Ilena Construction Company Limited; Labourer's International Union of North America, Local 183, General Contractors Section of the Toronto Construction Association and The Toronto Form Work Association (Respondents). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MARCH 1975

BARGAINING AGENTS CERTIFIED DURING MARCH

No Vote Conducted

1246-71-R: Ontario Precast Concrete Manufacturers' Association, Erectors Division (Applicant) v. Labourers' International Union of North America, Local 506 and Labourers' International Union of North America, Ontario Provincial Council (Respondents) v. Electrical Power Systems Construction Association (Intervener #1).

Unit: "all employers of employees engaged in all phases of the erection and finishing of precast concrete products in the building and construction industry for whom the respondent has bargaining rights in the Province of Ontario, in the industrial, commercial and institutional sector, the residential sector, the sewers, tunnels and watermains sector, the roads sector and the heavy engineering sector." (no employees in the unit). (HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS.).



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# Monthly Report

ONTARIO LABOUR RELATIONS BOARD

Report





ONTARIO LABOUR RELATIONS BOARD REPORTS

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at the second hearing as to whether the concession was made, after reviewing our notes we find that the concession was made. However, it does not assist the complainant. The Board's task is to assess the conduct of the union at the time it was representing Mr. Prinesdomu. The concession was not that Soares was unqualified and Mr. Browne and Mr. McCullough knew this at the time each acted. Rather, the concession was in the nature of statement of how counsel to the respondent was going to argue his case or what the respondent now accepted to be true. Counsel for the complainant did not attempt to "pin down" his understanding of the concession at the time it was made, and without such a clear stipulation against Mr. Browne's evidence we are not prepared to find that Browne believed Soares unqualified at the time he refused to file the grievance. Browne acted timidly and may have based his decision on an incorrect interpretation of the significance of the job specification. But he did not act in an arbitrary manner. The same can be said for Mr. McCullough. Accordingly the complaint is dismissed.

0273-75-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. (Applicant) v. SPARTON TOOL & MOULD LTD. (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members E. Boyer and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: H. C. Anderson for the applicant; D. I. Wakely and H. Schmidt for the respondent.

DECISION OF THE BOARD: June 3, 1975.

. . . .

3. At the hearing the respondent submitted that this application was premature in that the operations of the respondent concerned are in a build-up situation so that a sufficient number of employees were not present at the date of the application. According to the respondent's representations the respondent is in the process of expanding its plant operations that will require it to employ in five months time a full complement of 22 to 25 employees. It is estimated that two employees per month will be retained until the full complement is achieved. As of the date of the instant application all classifications in the respondent's operations were filled and eleven employees were retained to fill those classifications. The Board was informed as of the date of the hearing scheduled in this matter

that two more employees were added to the respondent's complement of employees.

4. In the above circumstances the Board is satisfied that a substantial and representative segment of employees in the respondent's work force filling all classifications in existence at the date of the filing of the application are currently employed by the respondent in the appropriate bargaining unit. We therefore find that this application is not premature and accordingly the request of the respondent to delay these proceedings is accordingly dismissed.

5. Having regard to the agreement of the parties, the Board further finds that all employees of the respondent in Windsor, Ontario, save and except foremen, those above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . . .

7. A certificate will issue to the applicant.

7503-74-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. LONG MANUFACTURING DIVISION, BORG-WARNER (CANADA) LIMITED (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H.J.F. Ade and P. J. O'Keefe.

APPEARANCES AT THE HEARING: H. Carl Anderson and H. Powers for the complainant; R. N. Gilmore, E. D. Hart, A. Ostrov and V. Homan for the respondent.

DECISION OF VICE-CHAIRMAN D. H. KATES AND BOARD MEMBER H.J.F. ADE: June 3, 1975.

1. This is a complaint filed under section 79 of the Act where it is alleged that the grievor, Mr. Peter Saunders, was discharged contrary to section 58(a) of the Act. More particularly, the complaint states:

"The complainant has been conducting an organizing drive at the respondent's plant.

The grievor has been active in this drive and the respondent was fully aware of his activities."

2. The complainant trade union and the respondent employer are parties to a collective bargaining relationship at the respondent's Oakville plant. In September 1974, the respondent commenced operations out of a branch plant located in Malton. On October 15, 1974, the grievor was hired by Mr. David Hart, the project manager, to perform shipping and receiving duties. Mr. Saunders was also instructed to comply with the directives of the plant foremen so long as they did not interfere with the principal duties assigned him by Mr. Hart. The evidence is clear that the grievor was encountering difficulties with respect to discharging his job responsibilities as well as being the subject of reprimand for failing to adhere to company safety regulations. At the expiry of his probationary period on December 16, 1974, he was informed by Mr. Hart and Miss Adele Ostrov, plant personnel director, that he would not be receiving a pay increase normally given employees who have satisfactorily completed their probationary period. Several factors were recited in support of the position taken by his superiors. The grievor accepted their criticisms and undertook thereafter to improve his work performance. Mr. Hart indicated that there was a meeting prior to this discussion on November 13, 1974 on the subject matter of the grievor's failure to follow the instructions of the plant foremen. At that time Mr. Hart reviewed the grievor's job description in order that he clearly understood the nature of his position. The grievor could not recall this particular meeting but nonetheless admitted he had been reprimanded on several occasions in this connection.

3. In December, 1974, the grievor's interest in trade union representation was aroused. He discussed the advantages of such representation with Mr. Mike McKay who was described by the grievor as a maintenance man in the respondent's employ. There was some disparity in the evidence with respect to Mr. McKay's job function. Mr. Hart stated that Mr. McKay was a tool-setter who was transferred from the Oakville plant in September to help set up automated machinery in the new plant. He was assisted by another employee who was able to perform the tool setting function on smaller jobs but who was principally employed to do maintenance work. Mr. McKay was approached on several occasions by the grievor on the subject matter of the complainant's capacity to represent the interests of employees at Oakville. These conversations spanned a period of two months and usually took place during lunch and coffee breaks. Mr. Saunders also sought the opinion of approximately eight to



ten other employees on the advantages of trade union representation. The grievor indicated that at the time of these discussions there were approximately sixteen employees at the plant. The grievor stated that he did not know whether Mr. McKay (or indeed any other of the employees approached) discussed the subject matter of these conversations with any member of management.

4. Mr. Hart indicated that it was the respondent's practice to review the job performance of new employees every twenty days until expiry of their probationary period. In some exceptional instances, these reviews would continue every twenty days thereafter if the company was of the view that an employee was not fulfilling its expectations. Mr. Saunders was denied a pay increase upon expiry of his probationary period. A month later he was awarded the increase notwithstanding little improvement in his attitude towards his job in the hope that it would provide an incentive for him to improve. There was some dispute as to whether a formal meeting was held in January with respect to Mr. Hart's review of the grievor's job performance.

It is quite clear however that a meeting was convened on February 26, 1975 in the presence of Miss Astrov and Mr. Hart where the grievor was given a final warning. He was advised that unless there was the required improvement in his attitude towards his job he faced termination. He was handed a letter dated February 26, 1975 and was advised of the following:

"We are looking for a definite improvement in your willingness to co-operate with others, your ability to recognize production priorities, and your communications with others."

5. The incident that precipitated the meeting of February 26, occurred the day before when Mr. Saunders' failed, in accordance with Mr. Hart's instructions, to prepare an order for delivery. As Mr. Hart had assured the plant foreman that the order would be delivered, he was somewhat embarrassed when he discovered that his disappointment was directly attributed to the grievor's shortcomings. It appears that the grievor had involved himself with "the stamping machine" and had disregarded the urgency of Mr. Hart's instructions. This event in the respondent's opinion was consistent with the grievor's pattern of conduct and justified one last chance. Evidence was adduced before the Board pertaining to the grievor's record. Generally, the respondent was confident that Mr. Saunders was quite capable of performing the duties required

of his job position. Nevertheless his posture towards accepting orders from the plant foremen as well as adhering to the respondent's safety regulations betrayed an attitude that required improvement. Incidents with respect to disputes with the plant foremen and failure to wear his safety glasses were cited as examples of these shortcomings. Mr. Saunders confirmed that he was experiencing these difficulties with his superiors although he admitted he did not perceive the urgency of the situation. Whenever he met with Miss Ostrov and Mr. Hart, the grievor assured them he would attempt to improve. At this point the only significant discrepancy between the testimony of Mr. Saunders and that of Mr. Hart and Miss Ostrov pertained to the number of formal meetings convened in the project manager's office on the topic of the grievor's job performance.

6. After the meeting of February 26, the grievor was on notice that if there was no significant improvement in his attitude his employment status would be terminated. The grievor at that time requested that a meeting be arranged with the foreman in order that the difficulties he was experiencing could be resolved. Mr. Hart indicated that one meeting was arranged for this purpose but had to be cancelled because of other more pressing matters. When asked in examination in chief whether he incurred any other problems between the date of this last meeting and his discharge, the grievor denied the occurrence of any particular incident. He indicated that as far as he was concerned he felt "things were going well." This impression was challenged in cross-examination by counsel. Indeed the evidence adduced before the Board indicates that the grievor was observed by Miss Ostrov in the process of carrying a passenger on a fork lift truck and lifting him to a height in order to retrieve some material from a shelf. He was also seen driving the truck over a false floor covering a large hole. Both these incidents were in direct contravention of the respondent's safety regulations. As far as Miss Ostrov was concerned "it was time to call it quits". A meeting was arranged on the afternoon of March 13, 1975, in the presence of Mr. Hart and Mr. Homan the plant manager. At that time it was resolved that Mr. Saunders be discharged.

7. Mr. Saunders stated that he asked Mr. McKay if he knew the name of the President of the complainant's Local at Oakville. Mr. McKay could not provide him with this information. On the morning of March 13, the grievor phoned the respondent's Oakville plant and requested that he be put in touch with the president of the union. He learned that his name was Mr. Gordon Thompson. Mr. Thompson worked

the afternoon shift that day and therefore could not be located. The receptionist, however, took a message and deposited it in Mr. Thompson's time box. At 10:00 a.m. the next morning Mr. Thompson answered the grievor's call. He stated that he phoned the grievor at the number indicated on the message. A woman answered the telephone. Mr. Thompson identified himself and asked to speak to the grievor. Mr. Saunders was located and a discussion ensued. The grievor requested information with respect "to getting the union in at the place he worked". He disclosed that he approached several of his colleagues on the desirability of trade union representation. Mr. Thompson asked the grievor whether "he was free to talk". Mr. Thompson stated that the grievor expressed concern with respect to a firing of another employee at the respondent's engineering plant for attempting to organize a trade union. The Board notes however that in his examination in chief the grievor made no particular reference to any concern "for being found out" as a result of the call. In any event, Mr. Thompson took the grievor's home phone number and indicated that he would be contacted by a business agent in due course.

8. Mr. Thompson has been employed at the respondent's Oakville plant for twenty years. He has held the position of President of his local since 1969. He indicated that the relationship between the respondent and the union was "a very good one" until the incumbent President was appointed. He accused the President for being "an anti-union man" because of his posture during a 17 week strike in 1968. Mr. Donaldson who at that time was not President of the company was observed with a camera taking pictures of employees picketing the respondent's premises. He was also observed along with other members of management driving across the picket line. At the material time of the strike it was alleged that the respondent secured injunctions against the employees for unwarranted picket line activity as well as hiring "scab labour". Mr. Thompson was of the view that "he was trying to break the strike". In cross-examination Mr. Thompson conceded that he could not attribute total responsibility for the length of the strike to Mr. Donaldson and admitted that it was only "a feeling" that the respondent under the incumbent's presidency was "anti-union".

9. At the end of the grievor's afternoon shift on March 13, 1975, the grievor stated that Mr. Hart told him that in two weeks time "some bosses from Chicago were to visit the plant and he wanted the spots on the walls cleaned for the brass." Mr. Hart experienced difficulty in recollecting the incident. He indicated however that the incident was quite insignificant in his own mind and therefore admitted that "he



might have mentioned to Peter that a clean up would be necessary." Mr. Hart informed the Board that the walls were painted after the grievor's departure.

10. On the morning of March 14, 1975, the grievor asked Mr. Hart for permission to leave work early in order to make a solicitor's appointment. Mr. Hart requested he see him later when an answer would be given. At 1:30 p.m. that afternoon a final meeting in the presence of Miss Ostrov and Mr. Hart took place. The grievor was informed of his discharge and was handed a letter to that effect containing a cheque (which included severance pay in lieu of notice), and a separation certificate. Mr. Saunders reacted by requesting to see the separation certificate and the reasons indicated for the discharge. Some concern was expressed by the grievor in connection with finding another job. Mr. Hart indicated that he would give him a reference but certainly would not endorse him with regard to any function requiring stockkeeping. No mention was made of the trade union at that meeting. Mr. Hart stated that he became aware that the grievor was involved with the trade union an hour after the discharge when Miss Ostrov related the contents of a conversation she had had with Mr. Mike McKay.

11. Miss Ostrov told the Board that the plant employs a part-time receptionist who normally works between the hours of 11:00 a.m. and 3:00 p.m. When asked if she received the phone call from Mr. Thompson on the morning of March 14, 1975, Miss Ostrov answered "No, I didn't". Neither counsel asked Mr. Saunders if he could identify the person who relayed the message that Mr. Thompson was waiting on the line at the time of the telephone call.

12. Miss Ostrov was asked by counsel for the respondent to indicate when she first learned of the grievor's trade union activity. She told the Board that on the morning of March 14, 1975, Mike McKay invited her to join a few other employees for a drink after work in celebration of his birthday. She did not answer immediately but indicated she would speak to him after that day. That afternoon Miss Ostrov told Mr. McKay that the grievor had just been discharged. She anticipated Mr. Saunders presence at the party and therefore felt in the circumstances that she would spoil the occasion should she accept the invitation. Mr. McKay reacted by stating that he hoped that it was not because of the conversations he had had with the grievor about the union that had caused his discharge. Miss Ostrov denied this by indicating that he was discharged for his attitude towards his job performance. Afterwards Mr. McKay proceeded

to the beverage room where the party was to be held and asked the grievor whether he would mind if Miss Ostrov attended the party notwithstanding the events of that day. Mr. Saunders stated that Mr. McKay prefaced his request by telling him that "I hope you don't think that I had anything to do with you being fired." Miss Ostrov attended the party and was afterwards "escorted" by Mr. McKay to her car.

13. Mr. Mike McKay was not called by either party to testify at the hearing. The evidence indicated that Mr. McKay was present during the course of these proceedings but was excluded along with the other witnesses from the hearing room.

14. The issue before this Board is whether the grievor's trade union activities played a part in the respondent's decision to terminate his employment. The key question raised by the parties in their representations to the Board was whether at the material time of the discharge the respondent knew of the grievor's efforts to organize employees on the complainant's behalf. The representative of the complainant submitted that there were two reasons why the Board can infer such knowledge by the respondent. Firstly, it is argued that Mr. McKay was the link to management and was the informant who disclosed the scope and nature of the grievor's activities. Secondly, it was suggested that Miss Ostrov received the telephone call from Mr. Thompson on the morning of March 14, 1975. The coincidence of the telephone call and the discharge later that afternoon is almost conclusive of employer knowledge.

15. Counsel for the respondent argued that there is direct testimony before the Board that management only learned of the grievor's union activity after the discharge. At all material times the respondent exhibited a tolerant posture towards the grievor with respect to his work performance. The evidence established that there was cause for terminating the grievor's employment. Underlying the respondent's position is the theory that after his final warning on February 26, 1975, the grievor committed a serious breach of the respondent's safety regulations. He anticipated his discharge and contacted the complainant immediately thereafter in order to solicit its help in avoiding the inevitable consequence of his actions.

16. When confronted with situations where the evidence is so conflicting and susceptible the interpretation in support of propositions cited by either party the Board must address itself particularly to matters pertaining to the burden of

proof, the credibility of witnesses and the existence or otherwise of an anti-union animus. We have often stated that where a discharge coincides with a trade union's organizational campaign a suspicion of unlawful activity may arise that requires a reasonable, credible explanation by the employer party. The Board puts the respondent employer to this task because the real reason for a discharge lies exclusively within its knowledge. Nevertheless, notwithstanding the nature of the explanation a mere suspicion is insufficient to justify a positive finding in favour of a complainant. The onus of proof rests with the complainant throughout to satisfy the Board on the balance of probabilities of the essential ingredients constituting the breach of the particular unfair labour provision alleged to have been violated. (See; National Automatic Vending Ltd. Case 63 CLLC ¶16,278 at p. 1162; Metropolitan Meat Packers Ltd. Case 62 CLLC ¶16,230 at p. 1025).

17. In the instant case the complainant alleges in its complaint that the grievor was discharge for his active participation in the complainant's organizational drive and that these activities were known by the respondent. The evidence is clear that at no material time was the complainant involved in an organizational campaign. At best the grievor's trade union activity was merely exploratory in the sense that he sought the opinions of his colleagues on the advantages of trade union representation. It was not until Mr. Thompson's phone call of March 14th, 1975 that the complainant was in any sense implicated in these proceedings. However, we have no difficulty finding that the grievor's inquiries were in furtherance of "an exercise of a right under the Act." The Board therefore is satisfied that the coincidence of the telephone call of March 14, 1975, and the discharge that same day raises a suspicion that requires some credible explanation. In reviewing the uncontradicted evidence adduced in these proceedings however, we are further satisfied that the employer did have reason to discharge Mr. Saunders for cause. In other words to the extent the employer is required to submit an explanation we are satisfied of its credibility. Nevertheless, notwithstanding the existence of cause for discharge, the question remaining before the Board is whether the complainant has established on the balance of probabilities that the grievor's trade union activities played a part in the respondent's decision to terminate. (See; The Delhi Metal Products Limited Case OLRB M.R. July 1974 450 at p. 453; The Fruehauf Trailer Company of Canada Limited Case OLRB M.R. July 1974, at p. 479).

18. The issue of whether the respondent through its executive officers and management personnel exhibited an



anti-union animus has not been demonstrated by the evidence. Mr. Thompson indicated that he was of the opinion that the good relationship that had been established between the complainant and the respondent in its Oakville plant had been undermined since the promotion of the incumbent President. It was submitted that the activities engaged in by the incumbent some seven years prior to these proceedings in protecting the respondent from unruly picket line activity justified this particular conclusion. In cross-examination, however, Mr. Thompson admitted that the respondent's posture during that strike could not be attributed solely to the incumbent President. For example, it was conceded that he was not the only member of management who had crossed the picket line. In other words, the Board finds no basis for attributing a policy inimicable to the complainant's interests on the basis of the past collective bargaining relationship in existence at the Oakville plant.

19. Nor are we satisfied that the telephone conversation with Mr. Thompson was conducted under a pall of fear for the grievor's job security. Mr. Thompson stated that the grievor expressed concern for his job should his efforts be discovered in light of an incident relating to the discharge of an employee at the respondent's Engineering plant. The grievor, however did not express these concerns at any time during the course of his examination in chief. Nor was there any direct evidence adduced by the complainant in support of the incident mentioned. Furthermore, the use by the grievor of the respondent's plant phone to call the complainant's local President as well as leaving a message with the respondent's receptionist at Oakville to return his call does not support any real concern for his job security. In other words the complainant has failed to establish any anti-union motivation by the respondent in effecting the grievor's discharge on the basis of the two incidents raised by Mr. Thompson.

20. The gravamen of the complainant's case was establishing a link between Mr. Mike McKay and members of the respondent's managerial staff. The evidence discloses that commencing in December, 1974, the grievor had several conversations with Mr. McKay on the advantages of trade union representation. During this period the grievor also surveyed the opinions of ten of his colleagues in connection with trade union representation. If the complainant's theory is to be considered sound then we are of the view that the respondent should have had knowledge of the grievor's activities long before the telephone conversation of March 14, 1975. Indeed, several opportunities arose where the grievor's termination could have been effected

under the veil of a discharge for cause. For example, the event that preceded the meeting of February 26th was one such opportunity that was not seized. On the other hand, the Board was bereft of an explanation as to why the grievor, upon completing his exploratory investigations, waited so long to contact a representative of the complainant for purposes of advancing the complainant's cause. We are more of the view that the uncontradicted evidence lends itself to an explanation contrary to the complainant's allegations. The Board finds that the coincidence of the incident involving the fork lift truck and the telephone calls of March 13th and 14th support the conclusion that the grievor was discharged solely for cause. After his final warning of February 26th the grievor's impression that things were going well was simply proven to be unfounded. Rather he was observed early in the week of March 11th mishandling a fork lift truck in direct violation of the respondent's safety regulations. Concurrently with the processing of his discharge the grievor sought the help of the complainant to rescue him from a situation that was irretrievably lost.

21. In light of the foregoing, the Board is not satisfied that the grievor was discharged for his union activity and therefore must dismiss the complaint.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: June 3, 1975.

The facts in this case are set forth in the decision of the majority.

The grievors doubts about the bona fides of his discharge, were first raised in his mind at a birthday party celebration, on the afternoon of his discharge because of a remark made to him by Mr. Mike McKay. The remark was as follows: "I hope you don't think that I had anything to do with you being fired." It is clear from the evidence that the roots giving rise to this remark referred to conversations that the grievor had from time to time with Mike McKay with respect to the merits of organizing a union in the respondent's plant. The grievor in his conversations with McKay indicated his favourable disposition toward having a union in the plant while McKay had indicated his opposition to organizing the plant.

As outlined in the review of the facts in the decision of the majority, the complainant union established through its evidence, the discharge of the grievor, the grievor's contemporaneous union activity, the coincidental timing of a telephone call relating to union activity and the almost immediate decision by management to discharge the

grievor, the probability of the employer's knowledge of the grievor's union activity and the existence of an anti-union animus by the respondent company. In my opinion the complainant union met all that was required of it in adducing evidence in complaints of this kind as set out in the National Automatic Vending Ltd. Case 63 CLLC ¶16,278.

The respondent adduced evidence to support its position that it had proper cause for the discharge of the grievor, notwithstanding this evidence it is my opinion that the respondent's case had to fail on two grounds.

First the credibility of the evidence of Miss Adele Ostrov, plant personnel director. Her evidence was that neither she nor the respondent company had knowledge of the grievor's union activity prior to his discharge. Her further evidence was that the first time she became aware of the grievor's union involvement was when she spoke to Mike McKay immediately following the discharge of the grievor. She testified that she told McKay that the grievor had just been discharged. McKay reacted to this news with a feeling of guilt by stating that he hoped that it was not because of the conversation he had with the grievor about the union. Miss Ostrov assured him that it was not for this reason but because of the grievor's job performance. This exchange begs the question as to why McKay felt guilty about the discharge of the grievor and why he should pose the accusation to Miss Ostrov. Miss Ostrov's assurance to McKay that the grievor was not discharged because of his union conversations with him but for other reasons, may well salve the conscience of McKay but in my opinion, it destroys the credibility of Miss Ostrov when she maintains that she had no knowledge of McKay's union activity prior to his discharge.

Secondly, I would not accept the respondent's defence because of its failure to call Mike McKay to give evidence. Earlier in the hearing we learned through the evidence of David Hart, the Project Manager, that Mike McKay was an excluded witness and that McKay had a conversation with Mr. Hart outside the Board Room with respect to Hart's probable evidence at this hearing. Following the unions discharge of its onus in matters of this kind as outlined in the National Automatic Vending Ltd. case, supra, I submit that the onus shifted to the respondent to meet the case presented by the complainant. The evidence of McKay was crucial with respect to the respondents defence that it was not aware of the grievor's union activity prior to his discharge. The respondent had on tap its



witness McKay who had been excluded in accordance with the Board's direction to exclude witnesses and the respondent saw fit not to call McKay to furnish this Board with the best evidence as to whether or not McKay had told the respondent company about the grievor's union activity. In failing to call McKay to testify on an issue known by it to be of crucial significance to its case, the respondent acted at its own peril.

In complaints of this kind heavy reliance must be placed on circumstantial evidence. It would be an impossible onus to place on a complainant to establish by direct evidence that an employee was discharged for his union involvement. In all cases of this kind there is an allegation of discharge for union activity by the complainant and a denial by a respondent company. The true reasons for the discharge of an employee lie exclusively within the knowledge or means of knowledge of a respondent company. This Board from its long experience is well aware that we have not as yet been fortunate enough to get a confession of guilt by a respondent company when accused of discharging an employee because of his union activity. For this reason the Board's guidelines and reasoning in such cases as National Automatic Vending Co. Ltd. (supra); Metropolitan Meat Packers Ltd. (1962) 62 CLLC ¶16,230; Fruehauf Trailer Company Limited [1973] OLRB Rep. October 547; and Disposal Services Company [1965] OLRB Rep. January 529, have evolved to assist the Board in its deliberations. There are some clear cut cases, as in the instant case, where the complainant has well established its case and has caused the onus to shift to the respondent. When that onus is not discharged by a respondent and when the defence as in the instant case falls far short of its onus and in fact raises serious questions of credibility then such a defence must be rejected.

Having regard to all of the evidence in this matter I would reject the reasons given by the respondent for the discharge of the grievor. I would find on the balance of probabilities that the grievor was discharged by the respondent company for his union activities and I would order the reinstatement of the grievor, Peter Saunders, to the same position which he held prior to his unlawful dismissal. I would further order the respondent to pay full compensation to Peter Saunders for wages and benefits lost as a result of such unlawful dismissal.

0234-75-M: ADATH CATERING COMPANY (A DIVISION OF MICHAEL FIRE-STONE SERVICES LIMITED (Employer) v. Hotel and Club Employees' Union, Local 299 of the Hotel and Restaurant Employees' and Bartenders International Union, (A.F.L.-C.I.O.-C.L.C. (Trade Union)).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members P. J. O'Keefe and L. Hemsworth.

APPEARANCES AT THE HEARING: R. C. Filion and H. Freedman for the employer; H. F. Caley for the trade union.

DECISION OF THE BOARD: June 6, 1975.

1. This is a reference from the Minister under section 96 of the Act as to whether there is authority to appoint a conciliation officer under S15 of the Act.

2. The circumstances giving rise to these proceedings are relatively simple and straightforward. In January, 1974, the employer assumed the catering services provided at the Adath Israel Synagogue in Metropolitan Toronto. On January 29, 1974 the employer entered into a collective agreement with the trade union incorporating the same terms and conditions of employment contained in the collective agreement with the predecessor caterer. At that time the parties agreed that the agreement terminate on the same date as the collective agreements entered into with the other "Kosher" caterers servicing synagogues in the Metropolitan area. The following clause was accordingly inserted in the collective agreement;

"DURATION, MODIFICATION AND RENEWAL:

The general conditions of this Agreement shall be in effect and binding upon the signatories representing both parties their successors and assignees for a period from Jan. 29/74-Sept. 1 1974 and shall be renewed automatically thereafter for periods of one (1) year; unless either of the parties desire to change, add to, delete, amend or terminate any of the terms of this Agreement, then not more than sixty (60) days nor less than thirty (30) days notice shall be given prior to the expiration date of this Agreement by either party desiring a change.

DATED AT TORONTO, ONTARIO January 29th 1974

Duly executed by the parties hereto this

FOR THE CATERERS:

Michael Firestone

Harold Zamon

FOR THE HOTEL & RESTAURANT  
EMPLOYEES' & BARTENDERS'  
INTERNATIONAL UNION, A.F.L.-C.I.O.  
on behalf of the designated  
subordinate Local unions

O. Zambri

Paul Robinson".

3. On July 2, 1974 Mr. P. Robinson on behalf of the trade union sent the employer in accordance with the termination clause notice of its desire to revise and amend the collective agreement. The uncontradicted evidence indicates that the pattern of bargaining with employers in this particular segment of the catering business was for the union to enter into a collective agreement with the largest caterer and the other caterers thereupon would follow suit. On this particular occasion the trade union was encountering difficulties in its negotiations with "Zuchters", thereby delaying the bargaining process with the other caterers. Finally, on November 22, 1974 the parties hereto met at the employer's office and the trade union submitted its proposals for amendment of the collective agreement. A subsequent meeting was held on November 29, at which time the parties engaged in serious bargaining. It appears that a consummation of an agreement was close but for a misunderstanding that arose over "the wage package". In any event, negotiations broke off at that point and were not resumed until February 19, 1975. In the interim a collective agreement was entered into between the trade union and "Zuchters Caterers". A copy was sent the employer. Because Mr. Michael Firestone, the proprietor of the respondent company was out of town at the time no meeting was arranged for the purpose of discussing the terms of the consummated agreement. On March 27, 1975, Mr. Firestone and Mr. Harold Zuman met with representatives of the trade union at the latter's office. At the meeting the employer informed the trade union that it simply could not accede to the terms of the "Zuchter Agreement". The trade union responded by indicating it would request the Minister to appoint a conciliation officer. That same day a formal request for appointment of a conciliation officer was made.

4. Counsel for the employer argued that the trade union's written notice dated July 2, 1974, was untimely in that the collective agreement being "for a term of less than one year" would not have expired in accordance with the provisions of S44(1) of the Act until January 28, 1975. Since proper notice to bargain was not given at the appropriate time anticipated under section 45 of the Act and since by operation of the termination clause contained in the collective agreement the agreement automatically



renewed itself for a period of one year, the Minister was without authority until that time to appoint a conciliation officer.

5. Counsel for the trade union argued that the employer at all material times acted in accordance with the termination clause of the expired collective agreement and therefore should not be heard to argue otherwise. Should the Board accede to the respondent's submission, we would be condoning a party taking advantage of its own wrongdoing in order to achieve a benefit not contemplated by the Act. Alternatively, it is submitted that even if the written notice dated July 2, 1974, is untimely the employer, notwithstanding, engaged in bargaining with a view to an amended agreement on two occasions in November 1974, thereby waiving the requirement for written notice at the appropriate time contemplated by the Act. The Minister, therefore, was couched with the authority to exercise his discretion under section 15(2) of the Act to appoint a conciliation officer.

6. The Board finds that the collective agreement dated January 29, 1974, was for a term of less than one year and therefore in accordance with S44(1) of the Act such agreement "shall be deemed to provide for its operation for a term of one year from the date that it commenced to operate." We therefore find that the written notice dated July 2, 1974, was untimely within the meaning of S45 of the Act. In making these rulings the Board emphasizes that any improper motive imputed to either party in seeking a term of operation of a collective agreement for less than one year in the circumstances described herein is completely unwarranted.

7. The Board, however, finds merit in the trade union's alternative submission. We are satisfied that the expiry date of the collective agreement was January 28, 1975. We are further satisfied that on November 22nd and 29th, 1974, the parties to the collective agreement met with a view to bargain for an amended agreement. Furthermore, we are satisfied that after the expiry of the agreement the officers and representatives of the employer acted in a manner consistent with continued bargaining when it met with representatives of the trade union on March 27, 1975, to discuss the impact of the consummated "Zuchter Agreement". We are therefore satisfied that at all material times the employer waived the requirement of written notice by the trade union of a desire to bargain by meeting and bargaining in a manner contemplated by S15(2) of the Act.

8. The Board therefore advises that the Minister has the authority to appoint a conciliation officer.

0295-75-R: Labourers International Union of North America  
Local Union #493 (Applicant) v. L. J. BROUSE CONSTRUCTION  
LIMITED (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES AT THE HEARING: R. Koskie for the applicant; Edward T. McDermott for the respondent.

DECISION OF THE BOARD: June 6, 1975.

. . .

3. The respondent adopted the position that it is not carrying on a business in the "construction industry" as defined in section 1(1)(f) of The Labour Relations Act. In order for the Board to determine whether this is an application for certification within the meaning of section 108 of The Labour Relations Act, it is necessary for the Board to be satisfied that this application meets the requirements of sections 106(b), 106(c) and 106(f) of The Labour Relations Act. A consideration of section 106(c) in turn requires the Board to interpret section 1(1)(f) of The Labour Relations Act. There was no dispute that the requirements of sections 106(b) and 106(f) were satisfied by the pertinent facts of this application. The applicant is seeking certification on behalf of a bargaining unit of construction labourers.

4. Mr. Donald L. Merritt, the president of the respondent, gave evidence before the Board. He testified that he purchased the respondent about five years ago and that the respondent is presently engaged in the building of power lines and installing underground and submarine cable for electrical transmission and for communication. The installation of cable on the ground requires the direct burial of the cable in a trench or by means of pulling a cable through a plastic pipe within concrete which has been buried in the ground. The witness informed the Board that the respondent has an office in North Bay and that his employees generally operate out of this office. The respondent employs labourers, machine operators, line foremen, groundmen, a carpenter, a carpenter foreman, foremen and a superintendent. Mr. Merritt gave evidence that the respondent is not engaged in constructing buildings, structures, roads, sewers, water or gas mains, pipe lines, bridges or canals. On the question of whether the respondent constructs tunnels, the witness stated that the respondent does not construct tunnels unless the establishment of a fifteen inch diameter pipe under a road or highway could be regarded as a

tunnel. The witness also stated that the respondent is not engaged in altering, decorating, repairing or demolishing.

5. In cross-examination, the witness agreed that the respondent works at various sites around North Bay for Ontario Hydro, Bell Telephone of Canada and North Bay Hydro. The respondent is a member of The Electrical Power Systems Construction Association (EPSCA) and is subject to a collective agreement between EPSCA and the Ontario Allied Construction Trades Council. Mr. Merritt agreed that on the date of the filing of this application the respondent's employees were engaged in underground work. He described the operations which are necessary for this work. A trench is dug for the caisson or cable by the machine operators and the labourers.

6. On the date of the filing of this application the labourers were involved in carrying conduits to the trench and in levelling and smoothing the bottom of the trench with shovels. Subsequently, the labourers assist in laying pipe in the trench and in pouring concrete. The concrete is then puddled between the pipes by the labourers who with the use of shovels also assist the machine operators to backfill the trench. Finally, the labourers assist in clearing up the job site. In further cross-examination, Mr. Merritt agreed that the sequence of operations described in paragraph five herein is basically the same as putting in pipe on any construction site. All of the respondent's work is performed at sites.

7. The Board has considered the representations of the parties. In our opinion, the respondent may be classified as an electrical contractor which constructs electrical installations at the site of such installations. Clearly, the respondent's operations involve the excavation of earth or construction material and the implanting or construction of structures or other works at the site thereof within the meaning of section 1(1)(f) of The Labour Relations Act. The Board finds that the respondent's operations are its business and that the respondent by virtue of operating such a business in the construction industry is an employer within the meaning of section 106(c) of The Labour Relations Act. Having regard to the foregoing, the Board finds that this is an application for certification within the meaning of section 108 of The Labour Relations Act.

8. The Board further finds that all construction labourers in the employ of the respondent within a twenty mile radius of the North Bay post office, save and except non-working foremen, persons above the rank of non-working foreman and persons covered by a subsisting collective agreement between



The Electrical Power Systems Construction Association and Ontario Allied Construction Trades Council effective May 1, 1974, constitute a unit of employees of the respondent appropriate for collective bargaining.

. . .

11. A certificate will issue to the applicant.

7491-74-M: BELLEVILLE GENERAL HOSPITAL (Applicant) v. Service Employees International Union, Local 663 (Respondent).

BEFORE: D. H. Kates, Vice-Chairman and Board Members H. J. F. Ade and O. Hodges.

DECISION OF THE BOARD: June 17, 1975.

1. This is an application under Section 95(2) where the question has arisen as to whether Mrs. Barbara Hewson, classified as an Assistant Admitting Officer, is an employee for purposes of the Act.

2. There was filed in evidence a collective agreement dated October 10, 1974, between the applicant and respondent whose term of operation is for two years from March 16, 1974 to March 15, 1976. The relevant provisions of the collective agreement provides as follows:

"Whereas the union by certificate dated the 16th day of June, 1970 is the sole certified bargaining agent for all employees of the Belleville General Hospital employed as office and clerical staff, save and except supervisors, persons above the rank of supervisor....."

#### Article 2 - Scope of Agreement

2.01 This agreement applies to all employees referred to in the first paragraph hereof, and as set out in the Schedule of Job Classifications and Rates of Pay hereinafter provided."

Schedule B  
Job Classifications and Rates of Pay

CLASSIFICATION	Effective Date	Start	6 Mos.	1 yr.	4 yrs.
Group 8					
Assistant	Sept. 15/74				
Admitting	March 16/75	698.50	716.50...	770.50	
Officer	Sept. 15/75	761.00	779.00...	833.00	

3. The respondent trade union made the following written submission with respect to its representations on the Examiner's Report:

May 26, 1975

"Dear Mr. Brunskill:

Re. the above-mentioned report, we desire to make the following statement:-

- 1) We are not challenging the accuracy of the report, however the Union claims that the examination of Mrs. Barbara Hewson by the examiner, Mr. D. A. McNab, does not support the Hospital's contention that Mrs. Hewson should be removed from the existing bargaining unit because of the fact she performs supervisory duties.
- 2) The classification of "Assistant Admitting Officer" has been part of the collective agreement since the date of certification - June 16, 1970 and there has been no official attempt by the Hospital to have this position deleted from the bargaining unit.
- 3) The Union does not request a hearing by the Board but ask that in view of the above statements, serious consideration be given to the objection by the Union, and that Mrs. Barbara Hewson should continue to remain a member of the existing bargaining unit.

If the Board decides to hold a meeting on this matter, please advised as to times and dates for us to be in attendance.

J. N. Hughes  
International Representative"

4. In reply to the respondent's submission the applicant indicated the following:

June 4, 1975

"Dear Mr. Brunskill:

I have had an opportunity to review the Examiner's report and also to consider the correspondence that you have received from the Service Employees Union concerning Mrs. Barbara Hewson the Assistant Admitting Officer at this Hospital.

In my opinion, there is no question that Mrs. Hewson does perform managerial functions and therefore should not be represented by a bargaining unit. I will admit that this classification has been in the bargaining unit for the past five years; however, I do not see this as a reason to continue with this type of mistake.

The Hospital's position is that we would not consider dropping this case and are therefore requesting that it be brought to the attention of the Board for the purpose of a ruling. Your consideration in this matter is very much appreciated.

R. L. Bentley  
Director of Personnel"

5. It appears that Mrs. Hewson was promoted from the position of "clerk" to the position of "Assistant Admitting Officer" on December 19, 1969. Furthermore she has retained that position during the intervening period up to and including the date of the instant application. And during this same period it is admitted that Mrs. Hewson in her capacity of assistant admitting officer was included in the appropriate bargaining unit in the disposition of a certification application in June, 1970 and was covered under the Scope clause of a collective agreement negotiated by the parties thereafter and continued to be covered under the agreement upon the conclusion of amendments thereto in October, 1974. At no material time has it



been asserted that Mrs. Hewson's duties and responsibilities have changed since her promotion in 1969.

6. The Board has often stated that where parties to a collective bargaining relationship have resolved by their agreement the employment status of an employee for purposes of the Act, a party thereto will not be permitted to withdraw from that agreement by means of an application under Section 95(2) of the Act. In such instances, the Board will confine its inquiry to changes, if any, in the duties and responsibilities of the disputed person since the date of their agreement. (See; F. J. Davey Home For the Aged OLRB M.R. August 1974 558). Therefore upon an application under Section 95(2) of the Act where the employment status of a person in dispute has been resolved having regard to the plain meaning of the collective agreement and in absence of any allegation of a change in the duties and responsibilities since the entering into of the collective agreement the Board has discontinued further inquiry. (See; The Indusmin Ltd. case OLRB M.R. February 1975 111).

7. In the instant case, we are satisfied that Mrs. Hewson in her capacity as assistant admitting officer has been treated by the parties for collective bargaining purposes as an employee under the Act and, more particularly, as recently as October, 1974 she was included under the scope of an amended collective agreement by reason of the wage rate negotiated for the classification she presently holds. We are therefore satisfied that Mrs. Hewson, in absence of any evidence to support any changes in her duties and responsibilities since the parties' agreement, is an employee for purposes of the Act. (See; The Collingwood General Marine Hospital case OLRB M.R. January 1975 18).

8. Notwithstanding the Board's position herein, we are of the view that it may serve a useful purpose to deal with the contents of The Examiner's Report on its merit. The Board is satisfied that Mrs. Hewson does not exercise managerial functions within the meaning of Section 1(3)(b) of the Act. The evidence indicates that Mrs. Hewson from time to time relieves her immediate supervisor Mrs. Gallinger, the chief admitting officer, when the latter is absent from work on account of illness or vacation. Mrs. Hewson may then concern herself with some of the duties normally performed by her immediate supervisor. These

functions when performed are of such an isolated and incidental nature that a positive conclusion for purposes of Section 1(3)(b) is not justified. We are fortified in reaching this conclusion by reason of the documents filed by the applicant employer as exhibits hereto. The long intervals indicated by the dates on these documents demonstrate the isolated pattern of occasions when Mrs. Hewson is called upon to exercise the functions normally performed by Mrs. Gallinger. These documents are essentially inter-departmental memoranda that confirm the administrative scope of the duties performed by the signatories thereto and confirm the intermittent incidence of Mrs. Hewson's relief work. At all other material times we are satisfied that Mrs. Hewson's supervisory duties are of so circumscribed a nature having regard to her reliance on Mrs. Gallinger, the chief admitting officer, that she is an employee for purposes of the Act.

7352-74-R: Retail Clerks International Association  
(Applicant) v. ADAMS FURNITURE CO. LIMITED (Respondent).

BEFORE: D.D. Carter, Vice-Chairman and Board Members  
J.D. Bell and P.J. O'Keefe.

APPEARANCES AT THE HEARING: Nelson Reed for the applicant;  
no one appearing for the respondent.

DECISION OF THE VICE-CHAIRMAN DONALD D. CARTER AND BOARD  
MEMBER P.J. O'KEEFE. June 17, 1975.

. . .

3. The applicant proposes a bargaining unit of "all employees of the respondent at the Regional Municipality of Niagara and Dunnville save and except store manager and persons above the rank of store manager". The respondent operates retail outlets at Niagara Falls, Welland, Port Colborne, Fort Erie and St. Catharines, all of these municipalities being located within the Regional Municipality of Niagara. As well, the respondent operates a retail outlet at Dunnville, which is located a few miles outside the regional boundary. At the hearing, Mr. Reed for the applicant argued that, because of the interchange of employees, the proposed unit was appropriate for collective bargaining under the Labour Relations Act.

4. Underlying the applicant's proposal is a fundamental issue - the appropriate geographic scope of bargaining units. In order to give this matter its full consideration, the Board appointed a Labour Relations Officers to elicit further facts as to the nature and composition of the proposed bargaining unit.

5. The report of the Labour Relations Officer reveals a significant amount of employee interchange among the Welland, Port Colborne, Fort Erie and Dunnville stores. The respondent employs a truck driver at its Welland Store who, in addition to servicing the Welland store, services the stores at Dunnville and Port Colborne. At the Dunnville store, there is one person employed on a full-time basis under the supervision of the manager of the Welland store. The full-time person at the Dunnville store is relieved from time to time by an employee from the Fort Erie store. This employee, in addition to relieving at the Dunnville store, also works two days a week on a regular basis at the Port Colborne store.

6. The report of the Labour Relations Officer indicates that the person employed on a full-time basis at the Dunnville store was supervised by the manager of the Welland store. It would appear that both the hiring and firing of part-time help and the granting of credit to customers by this person were subject to the approval of the Welland manager. Given this degree of supervision, the Board finds that this person does not exercise a sufficient degree of independent discretion to be considered to be exercising managerial functions. Accordingly, the full-time employee at the Dunnville store is an employee under the Act and eligible for inclusion in the bargaining unit.

7. The more important determination to be made in this case is whether the bargaining unit proposed by the applicant is appropriate for collective bargaining. At the outset it must be recognized that this regional bargaining unit is in effect a multi-municipality bargaining unit. Although the applicant's proposal refers to the Regional Municipality of Niagara, this regional municipality is comprised of individual municipal units, and these units are located some distance apart from one another. Because of the fact of geographic separation, the Board considers that it must act with caution before giving its stamp of approval to this type of bargaining unit. This does not mean, however, that a regional bargaining unit will never be appropriate. Rather, it simply means that such a unit must be consistent with two basic considerations - 1) the right of self-organization; 2) the requirement that collective bargaining relationships be viable.



8. There is the possibility that regional bargaining units may interfere with the right of self-organization by sweeping into the bargaining units employees who either do not wish to be organized or wish to be organized by some other bargaining agent. It should be recognized, however, that this threat to the right of self-organization may be no greater than that posed by the industrial unit at a single plant or a multi-location unit within a municipality. Whenever the Board makes a determination as to appropriateness, there is always the possibility that groups of employees who do not support the applicant will be swept into the unit. Although it can be argued that such a determination interferes with the right to self-organization, it is justified by the requirement that the Board determine a bargaining constituency that will lead to a viable bargaining relationship. In this case, moreover, the applicant has organized all but one of the stores falling within its proposed bargaining unit description, virtually eliminating any interference with the right of self-organization. This means that in this case considerations of viability assume greater importance.

9. In determining whether a bargaining unit is viable, the primary consideration is the community of interest among the employees. Where a community of interest is lacking, there is the distinct possibility that the bargaining agent will not be able to reconcile the disparate interest groups within the unit. If the bargaining agent is not able to represent effectively all groups within the unit, there is a good chance that this will affect the viability of the collective bargaining relationship itself. Community of interest is determined by the consideration of a number of factors and undue significance should not be attached to any one of them. Geographic separation of employees is one of these factors, but as the Board has indicated in the Usarco case, 1967 September O.L.R.B. monthly report 526, there are a number of other factors of equal importance. There are: 1) nature of work performed; 2) conditions of employment; 3) skills of employees; 4) administration; 5) functional coherence and interdependence. When the Board is determining the appropriateness of a regional bargaining unit, all of these factors must be considered.

10. Applying these considerations to the facts in this case, the Board finds that there is a community of interest among the employees employed at the Welland, Port Colborne, Fort Erie and Dunnville stores. The facts indicate that there is a significant degree of interchange of employees among these stores and a significant degree of common administrative con-

trol. The Board, however, does not find any community of interest between these employees and the employees at either the Niagara Falls or the St. Catherines store, nor does it find any community of interest among the employees at the Niagara Falls and St. Catherines stores. There is simply no evidence to establish a community of interest among the employees in a regional bargaining unit of the size proposed by the applicant. Instead, the Board considers that in the circumstances of this case, a smaller regional bargaining unit comprising the employees at Welland, Port Colborne, Fort Erie and Dunnville and separate bargaining units for employees at Niagara Falls and St. Catherines would be appropriate.

11. The Board finds that all employees of the respondent at Welland, Port Colborne, Fort Erie and Dunnville, save and except store manager and persons above the rank of store manager constitute a unit of employees of the respondent appropriate for collective bargaining. For the purpose of clarity, the Board notes that Mrs. Grace Stubbins is not to be considered as a store manager. This bargaining unit will hereinafter be referred to as bargaining unit #1.

12. The Board is satisfied on the basis of all the evidence before it that more than 65% of the employees of the respondent in bargaining unit #1, at the time the application was made, were members of the applicant on March 5, 1975, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of the Labour Relations Act to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

13. The Board further finds that all employees of the respondent at Niagara Falls, save and except store manager and persons above the rank of store manager, constitute a unit of employees of the respondent appropriate for collective bargaining. This bargaining unit will hereinafter be referred to as bargaining unit #2.

14. The Board is satisfied on the basis of all the evidence before it that more than 65% of the employees of the respondent in bargaining unit #2, at the time the application was made, were members of the applicant on March 5, 1975, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of the Labour Relations Act to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

15. The Board further determines that all employees of the respondent at St. Catherines, save and except store manager and persons above the rank of store manager, constitute a unit of employees of the respondent appropriate for collective bargaining. This bargaining unit will hereinafter be referred to as bargaining unit #3.

16. The Board is satisfied on the basis of all the evidence before it that more than 65% of the employees of the respondent in bargaining unit #3, at the time the application was made, were members of the applicant on March 5, 1975, the terminal date fixed for this application and the date which the Board determines under section 92(2)(j) of the Labour Relations Act to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

17. A certificate will issue to the applicant in respect of each of the three bargaining units.

DECISION OF BOARD MEMBER J.D. BELL: June 17, 1975.

1. I disagree with the majority that the geographic scope of bargaining unit No. 1 should be:

"All employees of the respondent at Welland, Port Colborne, Fort Erie and Dunnville."

2. The evidence is that the applicant does not have any membership at the Fort Erie location. Therefore the employees in Fort Erie should not be swept into a multi-municipality or regional bargaining unit by this Board against their wishes.

3. If the applicant wishes to represent the employees at Fort Erie it should first organize them at that location. Only after that has been done should the principles considered by the majority be given weight.

4. I would limit the geographic scope of bargaining unit No. 1 to Welland, Port Colborne and Dunnville.

0307-75-R: Retail, Wholesale and Department Store Union (Applicant) v. NORDIC HOTEL (Respondent) v. Group of Employees (Objectors).

BEFORE: G.W. Adams, Vice-Chairman, and Board Members E. Boyer and F.W. Murray.



APPEARANCES AT THE HEARING: H. Buchanan for the applicant; Andre Berthelot for the respondent; Donald J. Guertin for the objectors.

DECISION OF THE BOARD: June 18, 1975.

1. This is an application for certification.

. . .

4. The applicant has applied to be certified as the exclusive bargaining representative of a bargaining unit consisting of all employees of the respondent at Elliot Lake, save and except assistant manager, and persons above the rank of assistant manager.

5. The respondent requested that part-time employees be given a separate bargaining unit and that the office staff be excluded from both the full-time and part-time units. However, on questioning by the Board the respondent indicated that it was objecting to the inclusion of the office staff on the basis that Eva Parent, the person so employed, was employed in a confidential capacity. The respondent further requested the exclusion of Elmer Larson, designated as the Night Manager, and Phil Laverdiere, the Bar Manager, on the basis that those two persons, exercise managerial functions. On the other hand, the applicant objected to the inclusion of Marion Angott because it was alleged that she exercises managerial functions.

6. Having regard to the Board's practice both a bargaining unit consisting of full-time employees and a bargaining unit consisting of employees regularly employed for not more than twenty-four hours a week and students employed during the school vacation period are appropriate for collective bargaining.

7. Because it was recognized that the differences over the statuses of the above-mentioned persons could not affect the applicant's entitlement to a representative vote the parties agreed that a representation vote be conducted, that the ballots of the above-mentioned persons be segregated and the ballot box be sealed, pending the appointment and report of an examiner.

8. Accordingly, the Board directs a representation vote to be taken of the employees of the respondent in the following voting constituencies and the ballot boxed

to be sealed pending the appointment and report of an examiner:

All employees of the respondent at Elliot Lake save and except managers and those above the rank of manager, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period.

All employees not regularly employed for more than twenty-four hours a week, students employed during the school vacation period, save and except managers and those above the rank of manager.

9. Based on the agreement of the parties, Eva Parent, Elmer Larson, Phil Laverdiere and Marion Angott shall be permitted to vote although their ballots will be segregated.

10. The Board appoints Mr. C.F. Robicheau, Labour Relations Officer, to inquire into the duties and responsibilities of Elmer Larson, Eva Parent, Phil Laverdiere and Marion Angott and to report back to the Board.

11. The respondent challenged the timeliness of the application based upon an alleged collective agreement between Elnoral Hotels Limited and the Hotel and Restaurant Employees' and Bartenders' International Union (hereinafter referred to as "the Bartenders' Union"). The agreement, purportedly entered into on April 1, 1964, was to be effective until March 31, 1966 and by Article 15.01 was to be automatically renewed thereafter for successive periods of twelve months unless proper notice was given under the agreement or subsequent agreements. The respondent admitted that the Bartenders' Union had not negotiated for the employees covered by the collective agreement since April 1, 1964 and thus the respondent is relying wholly upon the renewal feature of Article 15.01.

12. By letter dated May 30, 1975 the Bartenders' Union was given notice of this application by the Deputy Registrar of the Board and the trade union failed to appear at the hearing.

13. Rule 9(1) of the Board's Rules of Procedure, R.R.O., 1970, Reg. 551, reads:

"9.-(1) a trade union or council of trade unions that is served with a notice of application or that claims to represent or to be the bargaining agent of any employees who may be affected by the application shall file its intervention, if any, in quadruplicate in Form 11 not later than the terminal date for the application and, if it fails to file such an intervention, it may be deemed by the Board to have abandoned any claim to represent any of the employees who may be affected by the application."

Section 1(1)(e) of the Labour Relations Act R.S.O. 1970, c. 232, reads:

"1(1)(e) "collective agreement" means an agreement in writing between an employer or an employers' organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employers' organization, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers' organization, the trade union or the employees."

14. Having regard to all the evidence it cannot be said a trade union represents employees of an employer where that trade union has failed, for over ten years, to negotiate a collective agreement on behalf of the employees in the bargaining unit and has failed to attend a hearing at which an application for certification is being brought by another trade union to represent those employees.

Accordingly the document produced by the respondent no longer represents a collective agreement within the meaning of the Labour Relations Act and thus does not constitute a bar to this application.

15. In coming to a similar conclusion, the Board in Canada Sand Paper Ltd. 58 CLLC 18,111 made the following observation:

"In our view if a trade union which has held bargaining rights goes out of existence, as for example, where its charter is withdrawn, it would be absurd to say that the employees concerned would have to seek termination of bargaining rights under section 41(1) before they could



get representation by another craft union. In such a case there would be no bargaining rights to terminate and we do not believe that the Legislature could ever have intended that section 41(1) would operate as a bar to an application by another trade union seeking to represent those employees. Where a trade union abandons its bargaining rights we think the same considerations apply because to all intents and purposes that union has ceased to exist in so far as the employees affected are concerned. We find, therefore, that there is no merit in the preliminary objection raised by the respondent."

16. The automatic renewal clause in no way affects this conclusion. In fact, the existence of the clause is not unusual. In the Belleville and District Builders' Exchange case [1963] OLRB M.R. May 114 the Board outlined its general approach to such clause, in writing:

"In situations of this kind the Board has said that as a general rule it will have regard to a second automatic renewal but thereafter the onus is on the union to satisfy the Board that it has not abandoned its bargaining rights. This it may do by showing that it retained an interest through contact with the other party to the agreement. Just what contact is necessary depends on the facts in each particular case. In this case there was none.

In these circumstances the Board finds that the applicant has abandoned its bargaining rights which it had under the said collective agreement with the respondent."

17. Accordingly, a representation vote will be taken of the employees of the respondent in the above-described voting constituencies. All employees of the respondent in the voting constituencies on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

18. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

19. The matter is referred to the Registrar.

7435-74-R: Carleton University Academic Staff Association (Applicant) v. CARLETON UNIVERSITY (Respondent) v. Employees (Objectors).

BEFORE: T. E. Armstrong, Q.C., Chairman, and Board Members P. J. O'Keefe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: J. Sack, Dr. D. Savage, Dr. J. Vickers and Dr. S. Healing for the applicant; C. Riggs, Dr. D. Brown, G. R. Love and J. Downey for the respondent; no one for the objectors.

DECISION OF T. E. ARMSTRONG, Q.C., CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFE: June 18, 1975.

1. In its decision of April 4, 1975, the Board set out the partial agreement of the parties as to the description of the appropriate bargaining unit: see paragraph 8. At the commencement of the reconvened hearing on May 6, 1975, counsel advised the Board that agreement had been reached between them on all outstanding bargaining unit description problems, save as to the status of Chairmen of Departments. Accordingly, the sole issue remaining to be determined is whether the persons holding the rank of "Departmental Chairman" are properly included within the bargaining unit. In seeking their exclusion, the respondent relies upon the provisions of section 1(3)(b) of The Labour Relations Act, which reads:

"1.-(3) Subject to section 80, for the purposes of this Act, no person shall be deemed to be an employee,

(b) who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations."

2. This is the first time that the Board has been called upon to define unit appropriateness in an application for the full-time faculty of an institution of higher education. For that reason, it is necessary to review the evidence in detail and to analyze the unique aspects of decision-making within a University. As will appear, counsel for the applicant contends that the traditional tests for determining managerial status in an industrial setting are not appropriate in making the same determination at a university. Counsel for the respondent, on the other hand,

while conceding that there are material differences between decision-making in an industrial enterprise and decision-making at a university, contends that there remain compelling reasons for excluding departmental chairmen, related, in the main, to their managerial link with other administrative officials, principally Deans, a category excluded by agreement of the parties.

3. The parties agreed that evidence of Dr. Peter King, Chairman of the History Department, would govern the Board's decision as to the status of all Departmental Chairmen. Before turning to an examination of Dr. King's evidence, it will be helpful to describe the basic organizational structure of Carleton University. Carleton University is a bi-cameral institution, with a Senate, concerned mainly with academic matters (sections 21 and 22 of The Carleton University Act, S.O. 1952, c. 117, as amended) and a Board of Governors (section 15) responsible, generally, for the government, conduct and management of the University, including the appointment of the President, Deans of Faculties and members of the University teaching staff. The chief executive officer of the University is the President. For the purpose of academic instruction, the University is divided into a number of Faculties and Schools, i.e., Faculties of Arts, Science, Engineering and Graduate Studies, Schools of Commerce, Journalism and Public Administration, etc.

4. Each faculty is headed by a Dean and contains a number of departments. The department of History, chaired by Dr. King, is one of fifteen departments within Division I of the Faculty of Arts (the Humanities Division). Within the History Department there are approximately thirty full-time tenured faculty members, four part-time or sessional lecturers, sixteen of seventeen graduate teaching assistants and several summer lecturers. It is common ground that the basic organizational unit of the University is the department. The department is comprised of all members of the faculty involved in teaching one or more subjects in a particular discipline. Each department has its own chairman.

5. We shall be examining the intra-departmental decision-making process in detail; however, it is generally true to say that, unlike an industrial enterprise, decision-making at this particular University tends to flow upwards from the department through the Dean to the President, with whatever approval or confirmation is required by various faculty or



advisory committees. Moreover, decisions tend to be made collectively, at least at the departmental level. There was repeated reference in the evidence and in the submissions to the "collegial" nature of decision-making at a university. A less arcane and more comprehensible explanation is that at the faculty level, decision-making is shared by the entire faculty and operates through a committee system.

6. In the History Department there are eight standing committees, comprised of faculty and student representatives as follows: the Committee of Fields of Appointments; the Selection Committee; the Promotion and Tenure Committee; the Curriculum Committee; the Graduate Programme Committee; and three Degrees Committees: one for Pass B.A., one for Honours B.A. and one for M.A. Membership on the committees is determined by the entire faculty on the recommendation of the Chairman of the Selection Committee. The Departmental Chairman is required to chair the Committee on Promotions and Tenure, although he may set on and chair other committees. The work of the committees is indicated by their titles. For example, the Committee of Fields of Appointments determines what areas of a particular discipline are to be taught in order that the appropriate faculty appointments may be sought; the Curriculum Committee decides on course content, including curriculum changes, new courses, etc. Generally, committees report to the department, meeting in plenary session. Decisions at all meetings, whether full department meetings or committee meetings, are arrived at either by informal consensus or by majority vote. The membership on committees is subject to annual change.

7. Any full-time member of the department, regardless of his rank and whether or not he holds tenure, is eligible for election as Department Chairman. Nominations may be made by anyone within the department. If more than one candidate is nominated, the selection is by ballot amongst all of the members in the department. Dr. King was chosen by acclamation in July 1973 and has served as Department Chairman continuously since that time. The term of office is three years and the incumbent is eligible to succeed himself once. Certain elected student representatives are considered to be members of the department for the purpose of selecting the chairman as well as serving on the various committees. If the Department Chairman's term is not renewed, he can, and usually does, revert to his position as a faculty member. The formal appointment of the Chairman is confirmed by the President, after consultation with the Dean.

8. The duties of the Chairman of a Department or the Director of a School or Institute are summarized in Exhibit 22, a document issued by the respondent's Senate office on November 1, 1974, entitled "Academic Organization Carleton University", which reads, in part, as follows:

- "1. to call and preside over meetings of the department;
2. to represent the department in administrative matters;
3. to bring to the attention of the department for discussion and action matters pertaining to the work and efficiency of the department;
4. to oversee the internal administrative business of the department in consultation with other members, and to delegate administrative activities as he sees fit;
5. to bring forward on behalf of the department, after consultation with other members, proposals requiring the approval of the appropriate Faculty Board, or of the Senate;
6. to designate, in consultation with other members of the department, the members who will take charge of or participate in courses or programs of the department. (In case of disagreement, the matter shall be referred to the appropriate Dean).
7. (Previously the Department Chairman prepared the department's library estimate but since April, 1969, library purchasing is done on an overall basis by the Librarian and the President. Departments may of course recommend specific books for acquisition.)
8. to submit to the appropriate Dean in writing, after consultation with other members, an estimate of the department's other budgeting needs for the ensuing year;
9. to perform such other duties in connection with the work and administration of the department as the President, or the appropriate Dean, may assign him."

9. Certain of the Department Chairman's duties, i.e., those relating to budget, tenure, hiring, promotion, etc. are of particular relevance to the shared or collegial decision-making process and they are examined in detail below. However, certain miscellaneous duties may be noted at this point. For example, as the above list indicates, the Department Chairman prepares the teaching schedule, subject to ratification by the full department. In preparing course assignments, he may be required to deal with particular requests and preferences expressed by faculty members. If a particular faculty member's preference cannot be accommodated to his satisfaction, he may carry the matter forward to the Dean, although, in Dr. King's experience, there have been no disagreements which he has been unable to resolve amicably through direct discussions with the faculty members involved.

10. The Chairman does not supervise his colleagues in their classroom work or in any other respect. Included in the Faculty Handbook (Exhibit 11) is an item entitled "Teacher Evaluation", which reference is made to assessments of faculty members by "senior colleagues" and to "student ratings" of faculty members. Nowhere in the evidence was it suggested that the Chairman plays a role in regular evaluations, except in committee presentations dealing with promotion and tenure, the details of which are examined later. The Chairman does not normally have occasion to deal with student complaints concerning instructors. Dr. King testified that a student with a complaint or problem would, instead, approach one of the faculty advisors appointed for the purpose of student consultation by the full departmental meeting.

11. A Chairman normally performs some teaching duties. Dr. King teaches one and a half courses, and in the next academic year will teach two courses. He sits on several non-departmental committees (for example, the Senate Executive Committee), not by virtue of his office as Chairman but in his capacity as a faculty member. The Chairman plays no role in the establishment of the salaries of his departmental colleagues. He does not take part in the faculty grievance procedure. He receives the normal salary of an Associate Professor, together with a stipend or honorarium of \$1000 (plus expenses) in consideration of extra duties performed as Chairman. When a member of the faculty wishes special time off, he makes application to the President, having first discussed the matter with the Chairman to determine whether the request can be conveniently granted. It is normal for the President to ask the Chairman for his recommendation with respect to special leave applications and the Chairman's recommendation is usually followed.



12. As a matter of routine, the Chairman signs applications by individual faculty members for research grants, not, however, as signification of approval and support, but merely as acknowledgment that the application is being made. Faculty members requiring graduate teaching assistants or markers normally make their own arrangements, subject to confirmation by the Chairman that funds are available within the current budget. Generally, it is clear that the Chairman is the single person within the department who communicates with the Dean in all matters of departmental administration. Dr. King stated that the Dean's confidence and support is essential in order that the Chairman may carry out his administrative duties effectively. Equally, he requires the support and cooperation of his colleagues.

13. Dr. King spends less than one-half of his working time on administrative duties and responsibilities as Chairman. As a rank-and-file faculty member, he spends approximately thirty hours per week either teaching or preparing for teaching, doing administrative work related to teaching, or in committee work unconnected with his work as Chairman. Approximately twenty hours per week are spent in administrative work as Chairman, either in committee meetings or other miscellaneous tasks: e.g., preparing for meetings, reviewing teaching schedules, reading or preparing memoranda, conferring with colleagues, reviewing the curriculum, working on the budget, etc. He agreed that, in general, it is true to say that as Chairman he co-ordinates the work of his departmental colleagues.

14. The more important functions of the Chairman - many of which illustrate the collegial nature of departmental decision-making - deserve more detailed examination.

(a) The Departmental Budget

The Chairman, following consultation with his departmental colleagues, prepares a preliminary budget (on the basis of funds allotted for the preceding year, together with an inflation allowance) for submission to the Dean. It is comprised of two major items: salaries for non-academic staff and office supplies and equipment. Faculty salaries are not included; in fact, the Chairman does not know the salaries of his colleagues, nor does he participate in the procedures followed at higher levels in approving or amending the preliminary budget. Excerpts from the departmental minutes (Exhibit 20) disclose that budget

cuts, made by the Dean, are simply reported as a fait accompli by the Chairman to the departmental meeting. Such reductions in the preliminary budget can and do affect the number of available academic support staff (i.e., sessional lecturers, graduate teaching assistants).

(b) Sabbatical Leave

There is a standing, University-wide policy on sabbatical leave for full-time faculty, contained in the Faculty Handbook (Exhibit 12) and approved by the Board of Governors. While the Chairman, together with the Dean, administers the leave policy (see, for example, the memorandum of November 14, 1972 from the President, requiring the Dean and the Chairman jointly to arrange the scheduling of sabbatical leave) there is no evidence that the Chairman plays any role in formulating that policy. Any disagreement between the Chairman and Faculty members concerning entitlement to, or timing of, sabbatical leave is resolved by the Dean. If sabbatical leave has to be postponed, notification of postponement is given by the Dean, rather than by the Chairman. Similarly, if a faculty member wishes to withdraw his notice of intention to take sabbatical leave within the six-month period proceeding commencement of leave, the agreement of the Dean and the President (not the Chairman) is required: see Policy on Sabbatical Leave, Exhibit 12.

(c) Hiring

(i) Full-time Faculty

Before recruitment can occur, the Department's Committee on Field of Appointments must determine what area within a particular subject requires staffing. The Committee's decision is then reported to, and ratified by, the full departmental meeting, and only then is the Chairman authorized to solicit applicants. The Selection Committee reviews all applications and determines which applicants should be interviewed, although the Chairman may screen and reject applicants who are obviously unqualified. Interviews are conducted by the entire Selection Committee, whose decision may be reported back to the full departmental

meeting. The proposed appointment is then discussed with the Dean ("with the involvement of the appropriate departmental committees") who authorizes the Chairman to make an informal offer to the applicant, on terms as to salary and rank prescribed by the Dean. Although the Chairman may be given limited mandate to negotiate salary, the permissible range of negotiations is stipulated by the Dean, and it is clear that the Chairman has no authority to commit the University to a final position. Dr. King agreed that he was a conduit in these matters and that final approval, including the formal offer of employment, came from the President. Matters of administrative detail - e.g., office and secretarial facilities, teaching assistants, etc. - may be discussed between the Chairman and the applicant, although standard departmental arrangements cover these relatively minor matters.

(ii) Sessional Lecturers

The Chairman has a more significant role in the recruitment and hiring of sessional lecturers who, it is to be noted, are excluded from the bargaining unit. The Chairman discusses particular needs, as well as potential candidates, with his colleagues, both to determine availability and to assess suitability of prospective appointees. Dr. King testified that sessional lecturers "would not be hired if [his] colleagues did not approve". According to the Faculty Handbook, appointments are "handled by the Chairman and the Dean, although the President gets a copy of the appointment. The formal appointment is offered by means of an agreement signed by the Dean". Summer lecturers are engaged in much the same manner, with little or no involvement by the departmental committees.

(d) Tenure

No matter is more rigidly structured than the procedure for granting of tenure to full-time faculty members. Each department is required to establish a committee



on tenure, consisting of the Chairman of the department and at least four other faculty members, as representative as possible of the ranks and fields of interest in the department. In the Department of History, the Chairman is required to chair the Promotions and Tenure Committee but the University-wide regulations (approved by the Board of Governors) permit departments to specify their own procedure for selecting the Chairman of the tenure committee. Intra-departmental determinations on tenure are given exclusively to the tenure committee. The departmental Chairman is required to present to the committee a detailed statements concerning the candidate, based upon all relevant sources: e.g., curriculum vitae, published works, etc., together with an appraisal and recommendation. Following its deliberations, the committee must prepare written recommendations, including any areas of disagreement, signed by all committee members.

A complex review procedure is also prescribed. The committee's recommendation is forwarded to the Dean (with copies to the candidate and to the President); the matter is considered by a Faculty (or Divisional) Committee on Tenure, chaired by the Dean and comprising all Chairmen of the Faculty (or Division), together with one member from each departmental committee on tenure. Following deliberations, the Faculty or Divisional Committee makes its recommendations to the President, through the Dean, accompanied by a written statement prepared jointly by the Dean and the appropriate Departmental Chairman, setting out the reasons for the recommendation. The President then makes his decision and communicates it to the candidate and to the Faculty and Departmental Committees concerned. For the unsuccessful candidate, there is a final appeal to the Tenure Appeal Committee, a standing committee of the Senate. Departmental Chairmen are not eligible for membership on the Tenure Appeal Committee. Dr. King stated that he did not participate in tenure procedures except as described above, and in particular that he made no informal recommendations, written or oral, to the Dean or any other persons concerning applications for tenure.

#### (e) Promotions

Like tenure, promotions are governed by a University-wide policy, adopted by the President's Advisory

Committee on Promotions (Exhibit 10). Each department is required to establish a promotions committee. In the Department of History, the departmental Chairman chairs the Promotion and Tenure Committee, which prepares a list of all persons eligible for consideration for promotion, together with an evaluation of each, based upon scholarship, teaching performance and general contribution to the University. The Chairman then submits the departmental recommendation - prepared and signed by all committee members - to the Dean, together with supporting documentation. The Dean may add names to the list of recommended promotions. The departmental Chairman then presents the Committee's recommendations to the Divisional Committee on Promotions. Dr. King pointed out that if the departmental Chairman dissents from the Committee's recommendation on promotion, someone else from the Department is asked to make the presentation. According to the uniform procedures as set out in the Faculty Handbook, the Dean requests confidential letters of recommendation from Faculty "referees" concerning the professional status of each candidate. The Dean then forwards the recommendations to the President for submission to the President's Advisory Committee on Promotions. The formal promotion is made by the President, as contemplated by section 15(3) of the Carleton University Act.

(f) Dismissals

Dr. King testified that he has no authority to discharge or discipline his colleagues. The University-wide procedures on tenure and dismissals (Exhibit 11), approved by the respondent's Board of Governors, contains no suggestion to the contrary. The document reads, in part, as follows:

"There is no formalized body of rules concerning the conduct of the Faculty, nor is there a laid-down procedure for determining the fact of undesirable conduct, and the penalty therefor is presumably denial of tenure or promotion. Suspension or termination of employment are penalties available in response to undesirable conduct. These matters affect the contract of employment between the Faculty members and the University. As such, they are ultimately under the jurisdiction of the Board of Governors,

although this authority is exercised only on the recommendation of the President, usually on the advice of the Dean." (underlining added).

There is an established procedure for dismissal which reinforces the fact that dismissal is within the President's prerogative: namely, a Presidential investigation, including a committee of inquiry. The only stipulated involvement of the departmental Chairman is at the "informal proceedings" stage, where the Faculty member may be invited by the President to meet with the President, the Dean and the Departmental Chairman. If this invitation is declined and the dismissal is contested, a formal appellate procedure comes into play, in which the Chairman has no apparent role.

(g) Relationship with Administrative Staff

The Department of History has one administrative assistant and three secretaries. Potential candidates are sent to the Department by the respondent's Personnel Department. The administration assistant, who works for the Chairman, is interviewed and presumably accepted for employment by the Chairman, although the formal act of hiring is apparently done by Personnel. The administrative assistant advises the Chairman on the suitability of applicants for the secretarial positions. In addition to dealing with the Chairman's correspondence, the administrative assistant deals with routine administrative matters, such as student records, budget expenditures, requisitioning of office supplies, etc. It is clear that the ultimate supervisory responsibility over the department's administrative staff lies with the Departmental Chairman (although a small proportion of his time is spent in supervising the clerical support staff who are not, of course, included in the bargaining unit). Dr. King testified that, if required, he would recommend dismissal of a secretary, although he hasn't had occasion to do so. This is consistent with the policy statement contained in the Faculty Handbook which provides: "The Bursar of the officer who terminates the employment of the support staff, on the basis of the recommendation of the department head".

(h) Merit Pay Increases

Much evidence was tendered concerning the role of



the Chairman in authorizing discretionary merit increases for full-time faculty. The President, in a memorandum to all Faculty members, set out procedures to be followed in granting discretionary increases for the academic year 1974-75. The substance of the memorandum was that increases were to be recommended by the Chairman following an assessment of the performance of individual members of the department, such recommendations to be subject to review by the Dean. In fact, however, in the Department of History the matter was dealt with by the entire department at a departmental meeting. Following the unanimous decision of the Faculty, the Chairman recommended that the same average discretionary increase be granted to each member of the department - a recommendation which was accepted and carried out by the administration. Acquiescence by the respondent in this departure from the President's memorandum is significant. In our view, evidence of the practical application of policies is of greater probative value than the formal policy itself.

(i) Confidential Files

Dr. King testified that he had access to all files in the History Department, including the personal files of his colleagues not available to others in the department. However, he pointed out that most of the material on those personal files dealing with assessments and evaluations would be made available to the Promotion and Tenure Committee. Documents relating to new appointments, including references and evaluations from former employers, would be seen by the Selection Committee. Although the files would contain any recommendations from the Chairman for merit or special salary increases, it is obvious that the Chairman would have knowledge of these matters independently of their inclusion on the files. The files do not contain information concerning wages. It was not established that the Chairman made use of the material in these files in any confidential function relating to labour relations other than those functions performed by the departmental committees, as outlined above.

15. In the light of the facts described above, we must determine whether the Departmental Chairmen should be excluded from the bargaining unit by virtue of section 1(3)(b) of the Act. This statement of the problem is deceptively simple; the underlying questions are complex and, in some senses, unique: is the managerial test capable of abstract formulation or must it depend upon the particular context in which it arises? If the test varies with the context (as we believe it must), what are the characteristics of the university governance which are controlling; in an institution where decision-making is shared by a peer group, is there a discoverable demarcation line between the administration (the management) and those subject to the edicts of the administration (the faculty)? If so, on which side of the line do departmental chairmen fall?

16. The first of the underlying questions is the easiest to answer. It is now well established that in particular institutions (notably hospitals) and amongst particular groupings of employees (highly trained technicians, paramedical employees, paraprofessionals, etc.) skill, training and the assumption of responsibility are not necessarily equivalent to the performance of management functions within the meaning of section 1(3)(b) of the Act. Thus we have held that a skilled white collar worker performing complex and important duties and having a measure of independent decision-making power may not exercise managerial functions. The two general tests most frequently propounded are first, whether the particular employee participates in the formulation of policy in a meaningful and significant way; and secondly, whether in the performance of assigned duties he has the capacity to affect the employment status of persons working under him: see Falconbridge Nickel Mines Limited, OLRB M.R. Sept. 1966, p. 379; The Hydro Electric Power Commission of Ontario, OLRB M.R. Aug. 1969, p. 669; McIntyre Porcupine Mines Ltd., Board file No. 4373-73-R (April, 1975).

17. It will be seen immediately that these tests are premised on the industrial model of hierarchic authority, where ultimate power resides above - typically, with the plant manager - and filters down through a management chain to the primary level of supervision - the unit supervisor, or foreman. Even in the hospital cases this is so, the difference being that the line between management and non-management is blurred by the importance, complexity and responsible nature of some of the functions performed by non-managerial employees. However, the same basic bureaucratic decision-making structure is present in the hospital as in an industrial enterprise: see Toronto East General and Orthopaedic Hospital Inc., [1974]

OLRB Rep. 672; Ottawa General Hospital, [1974] OLRB Rep. 714; Peterborough Civic Hospital, [1973] OLRB Rep. 154.

18. The university model is significantly different. While the Board of Governors is, in a general overall sense, responsible for the business operations of the institution, and the Senate for its academic policies, the power of detailed decision-making is diffuse and extends into the institution's basic organizational unit, the department. Moreover, management-type decisions are made not only by the Board of Governors, the Senate, the President, the senior administrative staff, the Deans, but by faculty members as well, and in more recent times, students, as members of various committees or boards. Counsel for the applicant argued that decision-making was reversed in the university, and that all critical management determinations flow from the departmental level to the higher administrative levels. This seems to us to be an over-simplification. Important determinations of general application are made at the higher levels and in this sense, a parallel with the industrial model remains. What is novel is that many important decisions, narrower in scope and having to do with the academic and personnel matters applicable to limited groupings, do originate at the departmental level, subject only to endorsement at the higher levels.

19. It is clear to us from the evidence that the effective initial decisions on hiring, promotion and tenure, curriculum, etc. are made by the faculty as a group. This, no doubt, reflects the fact that the university is seen, historically, as a community of scholars where common educational interests and goals - at least ideally - transcend the traditional management/non-management distinctions. In Hamburger v. Cornell University, 240 N.Y. 328, Mr. Justice Cardozo wrote:

"A governing body of a University makes no attempt to control its professors and instructors as if they were servants. By practice and tradition the members of the faculty are masters and not servants... They have the independence appropriate to a company of scholars." (underlining added).

20. This view of the status of faculty members led some universities in early faculty applications before the National Labour Relations Board to contend that no faculty members are eligible for collective bargaining, since all exercise supervisory authority within the meaning of



section 2(11) of the National Labour Relations Act. The N.L.R.B., however, rejected that argument, holding, in effect, that while an individual decision may be supervisory in character, if it applies to others, the same type of decision made collectively, by those to whom the decision applies, loses its supervisory character. Superficially, the result appears paradoxical. However, what we take the N.L.R.B. to be saying is that self-government, by group decision-making, is not the kind of externally imposed supervisory edict to which section 2(11) of the National Labour Relations Act is intended to refer. In our view, the same reasoning applies with equal force to section 1(3)(b) of The Labour Relations Act. This is not to say that there is no employer-employee distinction in the University. While the collegial relationship is unique, and while many important employment-related decisions are made communally, the faculty as a whole is still economically dependent on the decisions of the supreme governing body, the Board of Governors. Accordingly, there does exist, in our view, a sufficient distinction between the administration and the faculty to enable us to say that faculty members may bargain collectively under The Labour Relations Act.

21. What, however, of the status of Departmental Chairmen? Mr. Sack, on the one hand, contends that the exclusion of Departmental Chairmen would destroy the principle of the collegial decision-making. Mr. Riggs, as well, argues for the preservation of collegiality, but on different grounds, contending that the inclusion of the Departmental Chairman would preclude him from continuing to play his dual role as even-handed representative of both the faculty and the administration at the departmental level. In the absence of that necessary management link, according to Mr. Riggs, the parties will be driven into polarized positions and shared decision-making will be destroyed. Yet, if, as we have concluded below, the Chairman is indistinguishable in any significant respect from his colleagues, all of whom share more or less equally in the decision-making process, the threat of collegiality consists precisely in the respondent's tacit recognition that the traditional collective bargaining regime is appropriate for faculty members.

22. In short, the potential for polarization to which Mr. Riggs refers already exists, whatever our decision may be as to the status of Departmental Chairmen. Put another way, we are of the view that the survival of the collegial process does not turn on the question of inclusion or exclusion of Departmental Chairmen. A much more fundamental problem faces

the parties - and that is whether they can adapt in their relationship to the strains of collective bargaining. Legally, we have concluded that the faculty have the right to organize under The Labour Relations Act; the suitability of the traditional bargaining relationship and the capacity of the negotiating parties to fashion a modus operandi which will preserve the existing collegial structures remains to be tested.

23. Within the existing structures, as described in the evidence, we cannot conclude that Departmental Chairmen perform functions sufficiently different from those of their departmental colleagues to warrant their exclusion from the bargaining unit. In the Duff-Berdhal Report,\* Departmental Chairman is defined as:

"The administrative head of a department; i.e., a single field of policy. Some Universities use 'head' instead of 'chairman'. The latter perhaps conveys better the sense that he is primus inter pares."

There is no doubt, on the evidence, that the Departmental Chairman has an administrative role. As the Duff-Berdhal Report states:

"He always will and should have certain areas of administrative discretion, but the department's basic policies should be approved collectively."

The real question is whether the Chairmen at Carleton have sufficient individual discretion to justify their exclusion from the unit. We think not. In those areas of greatest importance - hiring, tenure, promotion and dismissal - the dominant role is played by the department collectively. It is true that the Chairman assembles data, makes presentations, gives evaluation reports at higher committee levels, etc., but he does so as a representative of the department, scrupulously expressing the will of his colleagues rather than his personal views, as the particular recommendation proceeds through the review process. In the more routine areas, while some potential for the exercise of independent discretion exists, it is for the most part narrowly circumscribed. Moreover, in a substantive sense, the decisions in these areas are of limited importance. It is true, for example, that the Departmental Chairman has some independent discretion in the employment of the administrative staff and, possibly, summer lecturers. These persons, however,

are not in the bargaining unit and we see no reason for excluding the Chairman on that ground. In our view, the infrequent exercise of authority over the office staff poses

\*"University Government in Canada", Report of a Commission sponsored by The Canadian Association of University Teachers and The Association of Universities and Colleges of Canada, U. of T. Press, 1966.

no danger of conflict of interest within the unit. It is important to emphasize that the overwhelming proportion of the Chairman's duties have nothing whatever to do with the supervision or control of the department's small clerical staff. In this connection, we agree with the observation of the National Labour Relations Board in Adelphi University, 195 NLRB No. 107 at page 19; [1972] CCH NLRB ¶23,950:

"An employee whose principal duties are of the same character as that of other bargaining unit employees should not be isolated from them solely because of a sporadic exercise of supervisory authority over non-unit personnel."

24. We have read with interest all of the National Labour Relations Board's cases cited to us by counsel. While it is true that the U.S. National Labour Relations Act is not identical to The Labour Relations Act in dealing with managerial exclusions, the relevant sections of the U.S. legislation are, in effect, a compendium of the major tests which this Board has developed in its assessment of the managerial function. The National Labour Relations Act does not speak of managerial functions, per se, but excludes from the definition of employee in section 2(3) "any individual employed as a supervisor". In section 2(11), supervisor is defined as -

"any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."



Accordingly, the U.S. decisions are, presumptively, of some assistance. However, even on the most careful reading, it is difficult to reconcile what appear to be two contradictory lines of authority. In the first two cases, C. W. Post Center of Long Island University, [1971] CCH NLRB ¶22,961, and Long Island University (Brooklyn Center), [1971] 189 NLRB 110, the Board excluded Departmental Chairmen as supervisors. In the next two cases - Fordham University, [1971] CCH NLRB ¶23,473, and the University of Detroit, [1971] 78 LRRM 1273, the Board included Departmental Chairmen in the bargaining unit, ostensibly on the ground that the Chairmen in the latter two cases did not have the power to make effective recommendations as to the hiring and change of status of other faculty members.

25. As the NLRB's jurisprudence has grown, decisions have continued to go both ways. Frankly, it is difficult to derive a consistent rationale based upon clear evidentiary distinctions. The fact that the NLRB is, itself, aware of its own ambivalence on the issue is reflected in the following passage from New York University case, [1973] 83 LRRM 1549:

"In virtually every case since we asserted jurisdiction over universities the status of department chairman, or heads, has been in issue. That is true here as well. Attempting to identify and resolve the complex threads, and even the nuances of the relationship among the faculty, administration, and department chairmen is not an easy task, nor one usually susceptible to a completely satisfactory conclusion."

26. The recent trend before the NLRB, however, appears to favour the inclusion of Departmental Chairmen performing duties similar to the Chairmen at Carleton. As was stated in the New York University case:

"Though chairmen have a certain formal responsibility with respect to decisions on the appointment, salary, promotion, and tenure of full-time faculty, it appears that they act primarily as instruments of the faculty in these matters. The chairmen, in these respects, therefore, stand on the same footing as the faculty, whence their authority flows."

27. There is very little Canadian jurisprudence to guide us in this difficult determination. Faculty members in two Community Colleges have been certified in British Columbia: Capilano College (Nov. 1973) and Vancouver City College (May 1974). In both, Division Chairmen were included. In Vancouver City College, [1974] 1 Canadian LRBR 298, the Board observes at page 302:

"That function [i.e., the administrative function of the Division Chairman] does not appear to be management - the exercise of authority over a group of people. Instead, it appears to be co-ordination of the instructional efforts of the many people in the division. The key indicia of managerial authority - the power to hire and fire, to evaluate and promote - are not features of this position. I do not mean to say that the Division Chairmen have no part to play in these decisions because they are made somewhere higher up. As a practical matter (subject to formal approval by the Principal), these are group decisions. The Division Chairman participates in the group and has substantial influence. However, so do ordinary faculty members who, as individuals, are clearly "employees" under the Code. Division Chairmen have no authority to impose discipline, except perhaps by way of verbal reprimands. They do prepare budget recommendations, but that task appears to be largely one of compiling figures with the real judgments about where to cut or where to expand being made elsewhere, again by a group."

Most, if not all, of these observations apply to the facts before us.

28. The two British Columbia decisions, as we have pointed out, involve Community Colleges. Other Canadian decisions which involve university faculty are of little assistance since, except in one case, no reasons were given. It is of interest to note, however, that in the several situations where faculty units have been certified, all have included Department Chairmen: see Universite du Quebec à Montreal (a decision of a Commission of Inquiry dated January 25, 1971, confirmed by the Quebec Labour Court); Notre Dame University of Nelson, B.C. (March 27, 1973); University of Manitoba (November 15, 1974); St. Mary's University Halifax (April 25, 1974).

29. For all of the above reasons, we find that Departmental Chairmen are properly included in the bargaining unit.

30. In our decision of April 4, we determined the appropriate bargaining unit as follows:

"All full time academic staff and professional librarians employed by the Respondent in the City of Ottawa in the Regional Municipality of Ottawa-Carleton save and except President, members of the Board of Governors elected by the Senate, Assistant to the President, Vice President Academic, Assistant to the Vice President Academic, Deans, Assistant Deans, Directors of Schools, University Librarian, Assistant to the University Librarian & Section Heads for Bibliographic Processing, Central Library Services & Systems."

"Note 1: The unit does not include persons engaged in non-academic administrative positions such as faculty registrars, the University registrar, his associate registrars, development officers, information officers & secretary to the Board of Governors, & persons currently employed in departments such as physical plant, finance, administrative services, student services, computer centre, planning, analysis & statistics, continuing education."

"Note 2: The unit includes teaching associates but does not include sessional lecturers (part time), technical aides, research officers, laboratory directors or supervisors, program consultant, graduate teaching assistants and persons engaged primarily in research at the University under a grant appointment nor does it include demonstrators, technical officers or field instructors other than those primarily engaged in teaching."

31. On the taking of the representation vote directed by the Board more than fifty per cent of the ballots cast were cast in favour of the applicant.

32. A certificate will issue to the applicant.

33. The Registrar will destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless



a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before the expiration of such 30 day period.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.: June 18, 1975.

I have had an opportunity of reading the decision of the majority as it refers to Department Chairmen and concede that there is considerable merit in such decision and much of the reasoning therefor.

Inasmuch as this is the initial application before this Board asking it to define an appropriate unit for the full-time faculty of a university, counsel for the applicant has stressed in his argument that we consider the jurisprudential authority found in certain decisions of the National Labor Relations Board.

With the dearth of authority in Canada, one would think that such an appraisal of the jurisprudence in the United States would be of great assistance to this Board in determining the difficult question before us, notwithstanding that such decisions were fashioned within the confines of a different Act, with different social, economic and other considerations prevailing.

A perusal of the decisions of the N.L.R.B. dealing with Department Chairmen indicates that the Department Chairmen in the various institutions of higher education in the United States had relatively similar duties and responsibilities and also that such duties and responsibilities were similar to those shared by Department Chairmen at Carleton University. Notwithstanding this striking similarity, in slightly less than one-half of the determinations concerning Department Chairmen, they were excluded from the bargaining unit. (See: Long Island University (Brooklyn Center), 189 N.L.R.B. 909; Adelphi University, 195 N.L.R.B. 640; Syracuse University, 204 N.L.R.B. No. 85; Farleigh Dickenson University, 205 N.L.R.B. No. 101; Point Park College, 209 N.L.R.B. No. 152.)

While the N.L.R.B. initially would seem to have excluded Department Chairmen from the bargaining unit, that pattern has not prevailed through to the present time. One may surmise that such change was made after the N.L.R.B. was able to see how the pattern of bargaining developed.

Since no pattern of bargaining has developed in this jurisdiction, one is not able to make such surmise.

Both counsel for the applicant and the respondent argued that in these unique circumstances there should be a preservation of the collegial aspect of decision-making; but argued in support thereof that different results should follow.

There is little argument that in many decisions, the Department Chairman seeks the approval and consent of other members of the faculty in his department.

The fact remains, however, that, in the traditional sense, collective bargaining tends to produce a differentiation between the supervisor and the supervised which to some extent undermines the collegiality which heretofore obtained. Thus, while there may be a sharing of authority between faculty and Department Chairmen in a horizontal way, there is also a vertical sharing of authority between the Department Chairmen, the Dean and the Senate in a vertical way. Thus it is apparent that managerial authority is shared in the university in many ways.

In my opinion, and I would so find, this Board should do everything in its power to maintain the status quo of collegial decision-making and should exclude Department Chairmen from the bargaining unit. To do otherwise, it would seem, would be to end the horizontal managerial decision-making authority presently resident in the faculty and to vest it in a very few hands such as the Dean and the Senate.

To include the Department Chairmen in the bargaining unit would be to remove from the department the only person who is able to speak on behalf of management and the only person who has the intimate knowledge of the department and the professional concerns of the faculty in that department.

It is not my intention to examine in detail the traditional indicia of the Board in determining who should be excluded as being managerial within the meaning of section 1(3)(b) of The Labour Relations Act.

It will suffice to say that I place different nuances upon the evidence than do my colleagues; and even adopting the traditional tests, I would find that Department Chairmen exercise managerial functions within the provisions of The Labour Relations Act.

It may well be that in this embryonic phase of determining the status of Department Chairmen at universities in general, and at Carleton University in particular, the Board must resolve it as a policy matter. If this be so, I would content myself in finding that in the preservation of the

existing non-adversary structures, Department Chairmen should be excluded from the bargaining unit.

In the future, of course, it may well be that the evidence concerning Department Chairmen at another university will constrain me to find that they should be included in the bargaining unit. However that may be, I would find that at this period of time, based upon the evidence obtaining in this particular university, Department Chairmen should be excluded from the bargaining unit.

0359-75-R: Amalgamated Meat Cutters and Butcher Workmen of North America (Applicant) v. F B I FOODS LTD. (Respondent).

BEFORE: D. H. Kates, Vice-Chairman and Board Members P.J. O'Keefe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: R.C. Mack and V. Gentile for the applicant; M. Gordon and W. Saunders for the respondent.

DECISION OF THE BOARD: June 19, 1975.

. . .

2. The Board further finds that all employees of the respondent at its plant in Trenton, Ontario, save and except supervisors and persons above the rank of supervisor, office and sales staff, security guards, quality control technicians, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. For purposes of clarity the Board notes that employees classified by the respondent as "highway drivers" are included in the bargaining unit. In instances where a respondent's undertaking falls within the purview of the Laws of the province of Ontario the delivery operations of that undertaking notwithstanding forays to and from neighbouring jurisdictions are nevertheless "one and indivisible" with the principal undertaking. (See; A.G. of Ontario v Winner [1954] A.C. 541 at p582). Accordingly it has been the Board's consistent practice to treat the extra-provincial delivery operations of the manufacturing portion of a provincial undertaking as part and parcel of that operation and to include employees engaged in the delivery operations in the appropriate unit. (Mason Windows Limited case OLRB



M.R. October [1973] p547; Wm. R. Barnes Company Ltd. case OLRB M.R. September [1967] p566; Crane Carrier Canada Ltd. case OLRB M.R. September [1970] p665; Domtar Limited, Trucking Division case OLRB M.R. July [1970] p495; Compagnie Miron Ltee case OLRB M.R. December [1972] p1034; OLRB M.R. January [1973] p60.)

. . .

5. A certificate will issue to the applicant.

0156-75-R: Canadian Workers Union (Applicant) v. FRANKEL STRUCTURAL STEEL LIMITED (Respondent) v. Shopmen's Local Union No. 743 of the International Association of Bridge, Structural and Ornamental Iron Workers (Intervener #1) v. Teamsters Union Local 938 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Intervener #2) v. Group of Employees (Objectors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members  
F. W. Murray and P. J. O'Keefe.

DECISION OF THE BOARD: June 20, 1975.

1. The Board, having considered the representations of the applicant trade union in its letter dated June 18, 1975 and having particular regard to the reference made by The Divisional Court to the judgement of the Court of Appeal in Re Cedarvale Tree Services Ltd. and Labourers' International Union of North America, Local 183, [1971] 3 OR 832 per Arnup J.A. at p840 in its decision dated June 10, 1975 in the matter of an application by this Board for directions pertaining to issues arising out of the instant application, directs the Registrar to proceed with the arrangements for the conduct of the representation vote ordered by the Board in its decision dated May 15, 1975.

2. In referring to the applicant's written submissions the Board particularly notes that the applicant has previously recorded its opposition to proceeding with the representation vote until its allegations of wrongdoing against the respondent and intervener have been disposed of. Indeed, the record indicates that that very procedure is presently being challenged by the applicant upon application to the Divisional Court for judicial review. In light of the foregoing we find that the concern expressed by the applicant that its

position might be prejudiced with respect to its application for judicial review should it participate in any arrangement for the conduct of the vote is simply unwarranted. In deciding to proceed with the representation vote, the Board having regard to all of the circumstances before us is motivated by a desire to be fair and equitable to all of the parties affected by this application.

3. In order to expedite this application further, the Registrar is directed to list for hearing the matter of the applicant's allegations of wrongdoing. The Board's decision of May 15, 1975, is varied accordingly.

0356-75-R: Bakery & Confectionery Workers' International Union of America, Local 426 (Applicant) v. CHRISTIE, BROWN & COMPANY LIMITED, CHRISTIE'S BREAD DIVISION OF NABISCO LIMITED, NABISCO FOODS DIVISION OF NABISCO LTD. (Respondent) v. Office and Professional Employees International Union, Local 131 (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members  
P. J. O'Keeffe and J.E.C. Robinson, Q.C.

APPEARANCES AT THE HEARING: W. Rankel for the applicant;  
R. N. Gilmore, M. B. St. John and K. Taylor for the respondent;  
A. Minsky and Marjorie Whitten for the intervener.

DECISION OF THE BOARD: June 24, 1975.

1. This is an application for certification for a group of the respondent's office and clerical employees.

. . .

4. Counsel for the intervener indicated in its intervention the following inter alia in connection with the applicant's activities in filing the instant application:

"We advise that the Intervener will argue at the hearing of this application that the Board ought to dismiss the application in that the Applicant's organizational campaign was supported by the Respondents, contrary to Section 12 of the Act. In support of this allegation, we advise that Mr. John Correa informed the Impartial Umpire at the hearing convened by him at Montreal, Quebec on April

14th, 1975 that the Respondents favoured the Applicant rather than the Intervener as bargaining agent and had stated that the employees were "better off" as members of the Applicant. These remarks were repeated by the said Correa at a meeting of the Intervener's members convened at the Rubber Workers' Hall, New Toronto, Ontario at approximately 8:00 p.m. on April 17th, 1975. By reason of his remarks, Correa thus influenced the subject employees to make application for membership in the Applicant."

5. Mr. John Correa was subpoenaed by the intervener and testified on the subject matter of the allegations heretofore cited in counsel's letter. Mr. Correa denied categorically the statements attributed to him by the intervener in its charges. Miss Marjorie Whitten, president of the intervener local, was called by counsel to adduce evidence in support of the allegations. Miss Whitten testified that the statements attributed to Mr. Correa on the occasions alleged in the intervener's charges were indeed made by him. Counsel for the intervener called no other witness in connection with the intervener's charges.

6. The Board is satisfied, in the absence of any evidence of the nature, identity and scope of any "employer support" as alleged in the intervener's allegations that a prima facie case has not been made in support of a finding that the applicant is prohibited from being certified within the meaning of section 12 of the Act.

7. Counsel for the intervener also alleged that the applicant's application for certification be dismissed in that by decision of an Impartial Umpire dated April 22, 1975 the applicant was denied justification to organize the respondent's employees affected herein and was ruled in violation of the relevant "no raid" provisions of The Canadian Labour Congress (CLC) constitution. As a result of the instant application, appropriate steps are presently being taken to discipline the applicant trade union in accordance with the rules of that organization.

8. At the outset the Board requested counsel, in making his representations on the issue, to address himself specifically to the Board's position in a like circumstance set out in The Firestone Steel Products of Canada Limited case, OLRB M.R. September 1970, 660 at p. 661-2:



"4. It is apparent from the facts of this case that the applicant has applied for certification in an attempt to displace the intervener as bargaining agent for certain employees of the respondent. It would further appear that since both the applicant and the intervener are members of the Canadian Labour Congress, this "raid" by the applicant is contrary to the constitution of the Canadian Labour Congress and the intervener's position with respect to this has been upheld by Mr. Goldenberg. However that may be, the jurisdiction of the Labour Relations Board is not dependent upon or subject to the Canadian Labour Congress or its constitution. As indicated in the intervener's telegram, the decision of Mr. Goldenberg as arbitrator in the dispute between the affiliates of the Canadian Labour Congress is binding upon the Congress and the two affiliated unions. The Canadian Labour Congress may take whatever action is open to it as a result of the award of Mr. Goldenberg and this action may include the suspension of the U.A.W. from the Canadian Labour Congress. Even if the applicant is suspended from the Canadian Labour Congress, this Board's jurisdiction and any decisions made within this Board's jurisdiction can in no way be affected by such suspension. Again, the intervener may have a cause of action in a civil proceeding against the applicant as a result of this application having been made, however, whatever rights the intervener has in a civil proceeding can in no way affect the jurisdiction of this Board. This Board's jurisdiction is circumscribed by The Labour Relations Act and the rights of the parties in an application are determined by that Act. In any certification proceeding, the Board's primary concern is to ascertain the wishes of the employees in the bargaining unit. Since the applicant has requested that a pre-hearing representation vote be taken, the Board is the opinion that the wishes of the employees can be ascertained by the taking of a vote in this matter."

9. The principal distinction cited by counsel between the circumstances cited in The Firestone Steel Products Limited case and the situation now facing the Board is that in the former case proceedings under the C.L.C. constitution were

initiated by way of charges by the incumbent trade union, allegedly victimized by an associated member's attempts to displace it as bargaining agent. In the instant case the applicant trade union applied under the constitution for justification to organize the employees represented by the intervener and in accordance with the due process provisions of the C.L.C. procedures, the application was denied. Furthermore, it was ruled that the attempt to organize was in violation of the no raid provisions of the constitution. Notwithstanding these adverse rulings, the applicant in filing the instant application should be estopped from proceeding further having regard to its conduct. In other words, the intervener argues that the Board should exercise its jurisdiction in an equitable manner by raising a bar to the application.

10. The Board must reject counsel's submissions on a number of grounds. Firstly, the Board is without authority under the Act to exercise its "equitable" jurisdiction in the manner suggested. The Board, indeed, may take "administrative notice" of the aims and objectives from an industrial relations perspective of the "no raid" provisions of the C.L.C. constitution. Nevertheless, there is nothing referred to in The Labour Relations Act which justifies the Board, either directly or by implication, in restraining the exercise of our jurisdiction in a manner subservient or ancillary to the C.L.C. constitution. The Board has learnt through experience that it lacks jurisdiction to impose and remove bars to applications for certification unless expressly instructed by a fair interpretation of the legislation. Otherwise what may appear "equitable" to one party will surely be viewed as "arbitrary" by the opposite party. For example, it was in the exercise of the Board's "equitable" jurisdiction that it ruled in The Brayshaws Limited case, OLRB M.R. February 1970, 1297 that "a collective agreement negotiated in the shadow of another trade union's organizational campaign" is not a bar to an application for certification. Upon application for judicial review in The Shopmen's Local Union No. 743 of the International Ass'n of Bridge, Structural and Ornamental Iron Workers v. Brayshaws Steel Ltd. et al case, 71 CLLC ¶14,084, Jessup, J.A., at p. 370 stated:

"I cannot leave this case without two comments. Firstly, I note the painstaking care, fairness and intellectual honesty of the Board in the protracted proceedings before it and as evidenced by the reasons for its

decisions. Secondly, it is said the equitable jurisdiction contended for is essential to the effective functioning of the Board not only in circumstances such as the present but so as to enable it to frustrate, for instance, a 'sweetheart contract'; it will be a matter for the wisdom of the Legislature whether there should be the grant of such a power."

11. The second reason for rejecting the intervener's argument is somewhat a variation of the first. The Labour Relations Act guarantees employees the freedom to select a trade union of their own free choice, (see section 3). That freedom, of course, is subject to the important caveat that the Board has been satisfied of a variety of jurisdictional factors. Amongst these factors are that the application is timely (section 5), that the applicant is a trade union (section 1(1)(n)), and that the required number of employees in the appropriate bargaining unit are members of the applicant union (sections 6, 7). And in instances where these jurisdictional factors have been satisfied in situations involving the displacement of an incumbent bargaining agent, the effect of a Board certificate is to terminate that trade union's bargaining rights (section 48). In other words, The Labour Relations Act is structured to permit employees heretofore represented by a trade union to exercise their freedom from time to time to affirm or change the selection of a trade union representative. If the Board were to bar the instant application for the reasons cited by counsel, it would be denying, if not restricting (i.e., to non-C.L.C. member-unions), an employee freedom that is at the very root of the legislation. It appears clear to this Board that if it were intended that we defer our procedures to the rulings of an essentially private dispute resolving tribunal such as the "Impartial Umpire" under the C.L.C. constitution, the Legislature would have instructed the Board in the clearest language. (See, for example, section 81(14) of the Act where the Board is instructed to defer to a tribunal mutually selected by the parties in resolving jurisdictional disputes complaints.)

12. Finally, the Board, in any event, can find nothing untoward in the applicant's attempts to win approval of its organizational campaign in accordance with the C.L.C. rules and regulations. Failing such approval, the election left the applicant trade union as whether or not it could still live within the structure of that organization. The Board is not of the view that that decision should have any bearing on an otherwise legitimate application for certification.



13. The Board finds that all office and clerical employees in the employ of the respondent at 2150 Lakeshore Blvd. West, Toronto, save and except office managers and persons above the rank of office manager, accountant, secretary to the president, secretaries to the vice-presidents, purchasing agent and personnel department employees, constitute a unit of employees of the respondent appropriate for collective bargaining.

14. Counsel for the respondent requested that the Board exclude from the appropriate bargaining unit Janet Bowles and Merle Copeland, both classified by the respondent as assistant office manager, because they exercise managerial functions within the meaning of the Act. It appears that both employees are covered under the scope of the subsisting collective agreement between the respondent and the intervener. By its duration clause that agreement does not cease to operate until June 30, 1975. The respondent conceded at the hearing that there has been no change in the duties and responsibilities of these employees since the effective date of the agreement on July 1, 1973. The Board, therefore, finds that the two persons challenged by the respondent at the time of the application on May 29, 1975 are employees for purposes of the Act. (See The F.J. Davey Home for the Aged case, OLRB M.R. August 1974, 558.) Upon the expiry of the collective agreement referred to herein and upon the respondent entering negotiations with either the applicant or the intervener, as the case may be, then an appropriate reference may be made under section 95(2) of the Act in the event a question arises with respect to the disputed status of these persons for the purposes of the Act.

. . . .

18. The matter is referred to the Registrar.

0411-75-R: Canadian Union of Public Employees (Applicant) v.  
THE VICTORIA COUNTY BOARD OF EDUCATION (Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members  
L. Hemsworth and H. Simon.

APPEARANCES AT THE HEARING: Mrs. Ruby Chisholm and Mrs.  
Helen Browne for the applicant; D.G. Pyle and Allan J.  
Ingram for the respondent.

DECISION OF THE BOARD: June 27, 1975.

1. This is an application for certification.

. . . .

3. The applicant is a trade union within the meaning of section 1(1)(n) of The Labour Relations Act R.S.O. 1970, c. 232.

4. The respondent proposed a bargaining unit consisting of "all employees of the respondent in the County of Victoria regularly employed for 24 hours or less per week who are engaged in caretaking and maintenance, save and except supervisors, persons above the rank of supervisor, office staff, students employed during the school vacation period and employees covered by a subsisting agreement between the respondent and the Canadian Union of Public Employees, Local 855".

5. The applicant agreed with this description save for the exclusion of "students employed during the school vacation period".

6. The Board's practice is to include students and part-time employees in the same bargaining unit. (See Dominion Stores Ltd. [1970] OLRB M.R. Dec. 950; Cara Operations Ltd. [1969] OLRB M.R. June 349; Chapplen Stores Ltd. [1970] OLRB M.R. July 530.) However, the respondent submitted that, because the students were hired to work on "government programs" undertaken by the respondent on terms dictated by the Ministry of Education, the students should not be permitted to engage in collective bargaining. We find the submission without merit.

7. Students as they are employed during the vacation period do not constitute a category of employees excluded from the coverage of The Labour Relations Act. Accordingly, the Board must presume that the Legislature intended that they be permitted to engage in collective bargaining. It is true that other legislation could exclude additional categories of persons from the coverage of The Labour Relations Act but we believe such exclusions would have to be specific in the face of the specificity of excluded categories found in The Labour Relations Act. Further, the fact that an employer agrees to perform work on certain conditions is no reason to presume that it cannot engage in collective bargaining effectively or that it should be allowed to avoid this

process. In fact, it is not clear that the situation is either unique or to the employer's disadvantage as many negotiators experienced in public service and quasi public service negotiations can attest.

8. Accordingly, the Board finds that all employees of the respondent who are engaged in caretaking and maintenance in the County of Victoria regularly employed for 24 hours or less per week and students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor, office staff and employees covered by a subsisting agreement between the respondent and the Canadian Union of Public Employees, Local 855, constitute a unit of employees appropriate for collective bargaining.

. . . .

10. In this regard, the respondent submitted the names of nine employees employed within the above-described bargaining unit and the applicant submitted membership evidence corresponding to six of these employees. Two of the membership cards were dated December 9, 1974 and December 11, 1974, respectively. The date of application in this matter was June 5, 1975 and the terminal date set by the Board under section 92(2)(j) of the Act was June 16, 1975. Where an applicant produces satisfactory membership evidence on behalf of more than sixty-five per cent of the employees in a bargaining unit, the Board's practice is to grant outright certification. However, the Board's power under section 7(2) in this regard is discretionary and where the Board is confronted with membership evidence that pre-dates the date of application by more than six months a representation vote is normally directed—the presupposition being that such membership evidence is inherently unreliable. There was some doubt at the hearing in regard to the calculation of this six month period but a reading of the Board's jurisprudence confirms that the six month period is calculated back from the date of application, not the terminal date. (See Doyle's Bakery 52 CLLC 18,063; Ben Bruinsma and Sons Ltd. [1963] OLRB M.R. July 223; P.E. Brule Ltée. [1964] OLRB M.R. Feb. 597; Victoria Shipping Service Ltd. [1966] OLRB M.R. July 252; Howard S. Clark [1967] OLRB M.R. Sept. 533; Belleville General Hospital [1967] OLRB M.R. Sept. 569.) Indeed, this panel cannot conceive of a rationale that would make the terminal date of the application the appropriate standard in this respect



and thus cases like W.N. Construction (Ottawa) Ltd. [1968] OLRB M.R. Sept. 645 and Kawneer Installations Ltd. [1971] OLRB M.R. 674 would appear to be misstatements of the Board's policy. Thus the membership evidence in this particular application supports the issuance of a certificate and the Registrar is so directed.







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APPLICATION UNDER SECTION 39 DISPOSED OF DURING MAY

0007-75-M: Allison Hopman (Applicant) v. Canadian Union of Public Employees, Local 786 (Respondent Trade Union) v. St. Joseph's Hospital, Hamilton, Ontario (Respondent Employer). (GRANTED).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

0049-75-M: Ontario Nurses' Association (Trade Union) v. Toronto East General and Orthopaedic Hospital Inc. (Employer). (GRANTED).

0056-75-M: Hotels, Clubs, Restaurants, Taverns Employees Union, Local 261 (Trade Union) v. Carleton Towers Hotel (Employer). (GRANTED).

0057-75-M: Hotels, Clubs, Restaurants, Taverns Employees Union, Local 261, AFL-CIO and CLC (Trade Union) v. Taisman Motor Inn, Ottawa, Ontario (Employer). (GRANTED).

0071-75-M: Ontario Nurses' Association (Trade Union) v. Toronto East General and Orthopaedic Hospital Inc. (Employer). (GRANTED).

0072-75-M: The International Association of Machinists and Aerospace Workers (AFL-CIO) (CLC) and its Local Lodge No. 2183 (Trade Union) v. Clark Equipment of Canada, Division of BLH Canada Ltd. (Employer). (GRANTED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED OF

DURING MAY

7580-74-M: The Ottawa Newspaper Guild, Local 205 of The Newspaper Guild (Trade Union) v. The Citizen (a division of Southam Press Limited) (Employer). (TERMINATED).

0006-75-M: The Canadian Union of Public Employees, Local 87 (Trade Union) v. City of Thunder Bay (Employer). (AFFIRMATIVE).

0155-75-M: London and District Building Service Workers' Union, Local 220, S.E.I.U., A.F. of L., C.I.O., C.L.C. (Trade Union) v. St. Raphael's Nursing Homes Limited (Employer). (AFFIRMATIVE).



APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

7489-74-R: Sheet Metal Workers' International Association, Local Union #47 (Applicant) v. L. A. Graves Building Services Limited (Respondent). (REQUEST DENIED).

(1975) 2 OLRB M.R. - PAGE 415.

7564-74-R: Teamsters Local 938, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. The Clorox Company of Canada, Ltd. The Martin-Brower Company Division (Respondent) v. Group of Employees (Objectors). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

7483-74-U: Mr. Ronald George Rodgers (Complainant) v. Canadian Union of Operating Engineers, Local 101 (Respondent Trade Union) v. The Toronto Western Hospital (Intervener). (REQUEST DENIED).

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JUNE 1975

BARGAINING AGENTS CERTIFIED DURING JUNE

No Vote Conducted

7258-74-R: Ontario Nurses' Association (Applicant) v. Owen Sound General and Marine Hospital (Respondent) v. Group of Employees (Objectors).

Unit #1; "all registered and graduate nurses employed in a nursing capacity by the respondent in Owen Sound, save and except head nurses, persons above the rank of head nurse and persons regularly employed for not more than twenty-four hours per week." (137 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE PERSON CLASSIFIED BY THE RESPONDENT AS INSTRUCTRESS IS INCLUDED IN THE BARGAINING UNIT).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

(Certificate issued April 16, 1975, revoked April 25, 1975, and re-issued June 16, 1975).

7352-74-R: Retail Clerks International Association (Applicant) v. Adams Furniture Co. Limited (Respondent).

Unit #1: "all employees of the respondent at Welland, Port Colborne, Fort Erie and Dunnville, save and except store manager and persons above the rank of store manager." (7 employees in the unit).

Unit #2: "all employees of the respondent at Niagara Falls, save and except store manager and persons above the rank of store manager." (3 employees in the unit).

Unit #3: "all employees of the respondent at St. Catharines, save and except store manager and persons above the rank of store manager." (2 employees in the unit).

(1975) 2 OLRB M.R. - PAGE 491.

7404-74-R: Ontario Nurses' Association (Applicant) v. West Haldimand General Hospital (Respondent).

Unit #1: "all registered and graduate nurses employed by the respondent in a nursing capacity at Hagersville, Ontario, save and except head nurses, persons above the rank of head nurse, unit co-ordinator, nursing co-ordinator and persons regularly employed for not more than twenty-four hours per week." (34 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE INSERVICE INSTRUCTOR WHO ALSO ACTS AS STAFF HEALTH NURSE IS INCLUDED IN THE BARGAINING UNIT.).

(BARGAINING UNIT #2 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

7443-74-R: St. Catharines Typographical Union, Local 416, International Typographical Union (Applicant) v. The St. Catharines Standard Limited (Respondent).

Unit: "all employees of the respondent at St. Catharines employed in the Classified Advertising Department, save and except Classified Office Manager, Assistant Classified Office Manager, Director of Advertising, Classified Sales Manager, Classified and Display Advertising Salesman, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (13 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0023-75-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Milne & Nicholls Limited (Respondent) v. Employee (Objector).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent within a fifty mile radius of the Timmins Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

0106-75-R: Laborers International Union of North America, Local 491 (Applicant) v. J. Logan Kerr Ltd. (Respondent).

Unit: "all employees of the respondent in the City of Timmins, save and except foremen, persons above the rank of foreman and office and sales staff." (9 employees in the unit).

0137-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwall Forming Limited, Cedar Forming Limited, and Luna Construction & Forming Ltd. (Respondents).

Unit: "all construction labourers employed by the respondent, Greenwall Forming Limited, in the Townships of Hope, South Monaghan, Alnwick and all lands south thereof in the United Counties of Northumberland and Durham, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

0260-75-R: The Civil Service Association of Ontario Inc. (Applicant) v. Beaverton and District Ambulance Service (Respondent).

Unit: "all employees of the respondent at Beaverton, save and except supervisors, persons above the rank of supervisor, office staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (8 employees in the unit).

0261-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Olympia and York Developments Limited, Car-Allan Investments Limited and Davhil Investments Limited carrying on business under the firm name and style of Flemington Park Condominiums (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent engaged in cleaning



and maintenance at Flemington Park Condominiums in Metropolitan Toronto, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (16 employees in the unit).

0266-75-R: London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Modern Building Cleaning a Division of Dustbane Enterprise Limited (Respondent).

Unit: "all employees of the respondent engaged in servicing its contract at Robarts School Regional Centre for Hearing Handicapped at London, save and except foremen, persons above the rank of foreman, and office staff." (13 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0267-75-R: London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Modern Building Cleaning a Division of Dustbane Enterprise Limited (Respondent).

Unit: "all employees of the respondent engaged in servicing its contract with the Municipality of London at the Police Administration Building at Adelaide and Dundas Streets regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except foremen and persons above the rank of foreman, and office staff." (2 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0273-75-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. (Applicant) v. Sparton Tool & Mould Ltd. (Respondent).

Unit: "all employees of the respondent in Windsor, Ontario, save and except foremen, those above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (11 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(1975) 2 OLRB M.R. - PAGE 469.

0274-75-R: The Civil Service Association of Ontario Inc. (Applicant) v. Niagara Child Development Centre (Respondent).

Unit: "all employees of the respondent at the Niagara Child Development Centre in Welland, save and except supervisors, persons above the rank of supervisor and students employed

during the school vacation period." (11 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY AND IN ACCORDANCE WITH THE AGREEMENT OF THE PARTIES, THE BOARD NOTED THAT THE PERSONS IN THE POSITIONS OF COORDINATOR OF CHILD CARE AND COORDINATOR OF COMMUNITY EDUCATION ARE DEEMED TO BE SUPERVISORS AND THEY ARE THEREFORE EXCLUDED FROM THE BARGAINING UNIT.).

0275-75-R: The Civil Service Association of Ontario Inc. (Applicant) v. Seaway Valley Ambulance Service (Respondent).

Unit: "all employees of the respondent employed as ambulance drivers or ambulance driver/attendant in Winchester, Prescott and Morrisburg, save and except supervisors and persons above the rank of supervisor." (16 employees in the unit).

0278-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. ASAC Developments Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell engaged on construction projects, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT CARPENTERS AND CARPENTERS' APPRENTICES WHO ARE ENGAGED IN MAINTENANCE WORK ARE NOT INCLUDED IN THE BARGAINING UNIT.).

0281-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Sam-Sor Enterprises Inc. (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at Antica Tower Apartments located at 4001 Steeles Avenue, Downsview, Metropolitan Toronto, including resident superintendents, save and except property manager, persons above the rank of property manager, office and clerical staff." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT THE SAID MEMORANDUM IS NOT TO BE DEEMED TO CONSTITUTE A PRECEDENT WITH RESPECT TO THE MANAGERIAL CAPACITY OF RESIDENT SUPERINTENDENTS EMPLOYED BY THE RESPONDENT AT ANY OTHER LOCATIONS OF BUILDINGS OWNED OR MANAGED BY THE RESPONDENT.). (THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES THAT THE APPLICATION IS WITHDRAWN INSOFAR AS IT RELATES TO ANTICA HOUSE LOCATED AT 5000 JANE STREET, DOWNSVIEW, METROPOLITAN TORONTO).

0285-75-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local 141 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Genoble Distribution Limited (Respondent).

Unit: "all employees of the respondent in London, save and except foremen and dispatchers, persons above the rank of foreman and dispatcher, office and sales staff and persons regularly employed for not more than 24 hours per week." (9 employees in the unit).

0287-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Runnymede-Taro Homes (Respondent) v. Group of Employees (Objectors).

Unit: "all construction labourers employed by thr respondent on residential construction in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

0290-75-R: Ontario Nurses' Association (Applicant) v. Community Memorial Hospital (Port Berry) (Respondent).

Unit #1: "all registered and graduate nurses employed by the respondent at Port Berry who are engaged in a nursing capacity, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (14 employees in the unit).

Unit #2: "all registered and graduate nurses employed by the respondent at Port Berry who are engaged in a nursing capacity and who are regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except supervisors and persons above the rank of supervisor." (14 employees in the unit).

0295-75-R: Labourers International Union of North America Local Union #493 (Applicant) v. L. J. Brouse Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent within a twenty mile radius of the North Bay



post office, save and except non-working foremen, persons above the rank of non-working foreman and persons covered by a subsisting collective agreement between The Electrical Power Systems Construction Association and Ontario Allied Construction Trades Council effective May 1, 1974." (13 employees in the unit). (FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE CARPENTER FOREMAN AND THE LINE CREW FOREMAN ARE NOT INCLUDED IN THE BAR-GAINING UNIT).

(1975) 2 OLRB M.R. - PAGE 485.

0311-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. C. A. Pitts Engineering Construction Ltd. (Respondent).

Unit: "all employees of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

0312-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Browning-Ferris Industries of Thunder Bay Ltd. (Respondent).

Unit: "all employees of the respondent at the City of Thunder Bay, save and except foremen, persons above the rank of foreman, office and sales staff." (8 employees in the unit).

0319-75-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Anthia Carpentry (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0321-75-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Doral Holdings Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0322-75-R: Canadian Union of Public Employees (Applicant) v. Bestview Holdings Limited (Respondent).

Unit: "all employees of the respondent employed by it in its nursing home located at the City of Cornwall regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except supervisors and persons above the rank of supervisor, secretary to the administrator, graduate and registered nursing staff and persons covered by a subsisting collective agreement between the respondent and the Canadian Union of Public Employees and its Local 1496." (12 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0325-75-R: The Hotel and Club Employees' Union, Local 299, Toronto, Ontario, affiliated with the Hotel and Restaurant Employees' and Bartenders' International Union (Applicant) v. Hotel Toronto (Respondent).

Unit: "all employees of the respondent employed at its hotel in the Municipality of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office, sales and accounting staff, front desk staff, students, and management trainees." (31 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0326-75-R: Christian Labour Association of Canada (Applicant) v. Simcoe Mechanical Contracting Limited (Respondent).

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (HAVING REGARD TO THE FOREGOING).

0327-75-R: Canadian Union of Public Employees (Applicant) v. St. Lawrence Sanatorium (Respondent).

Unit: "all employees of the respondent at Cornwall, save and except supervisors, persons above the rank of supervisor, secretary to the administrator, graduate and registered nurses, technical personnel, persons regularly employed for not more than twenty four hours per week and students employed during the school vacation period." (63 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0336-75-R: Service Employees Union Local 204, A.F. of L., C.I.O., C.L.C. (Applicant) v. Trillium Home for the Aged (L.O.B.A. Ont. West Incorporated) (Respondent).

Unit: "all employees employed at Trillium Home for the Aged, Orillia regularly employed for not more than 24 hours per week, save and except registered nurses, clerical workers, supervisors and persons above the rank of supervisor." (10 employees in the unit).

0338-75-R: United Rubber, Cork Linoleum and Plastic Workers of America, AFL-CIO-CLC (Applicant) v. Garlock of Canada Ltd. (Respondent).

Unit: "all employees of Garlock of Canada Ltd. at its Lenworth Avenue plant in the City of Mississauga save and except foremen, persons above the rank of foreman, office and sales staff." (3 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0341-75-R: Standard Tube Employees' Trade Union (Applicant) v. Standard Tube Canada Limited (Respondent).

Unit: "all employees of Standard Tube Canada Limited at Blenheim, Ontario, save and except foremen, persons above the rank of foreman and office staff." (140 employees in the unit).

0342-75-R: Office and Professional Employees International Union, Local 131, AFL-CIO-CLC (Applicant) v. The Lummus Company Canada Limited (Respondent).

Unit: "all hourly rated office and clerical employees including field clerical employees of the respondent at its Douglas Point Bruce Heavy Water Plant Project in the Township of Bruce, save and except Inspectors, First Aid Staff, Paymaster, Security Guards and one secretary each to the Construction Manager, the Personnel and Industrial Relations Supervisor and the Office Manager." (47 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE BARGAINING UNIT INCLUDES ONLY THOSE EMPLOYEES AND JOB CLASSIFICATIONS PRESENTLY PAID ON AN HOURLY RATE BASIS). (FOR THE PURPOSES OF CLARITY THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT THE SAFETY CLERK IS INCLUDED IN THE BARGAINING UNIT.).

0343-75-R: Amalgamated Meat Cutters and Butcher Workmen of North America, A.F.L. - C.I.O. - C.L.C (Applicant) v. Bittner Packers Limited (Respondent).



Unit: "all employees of the respondent at its plant in Metropolitan Toronto save and except working foremen, foremen, foreladies, persons above the rank of foreman, foreman, forelady, persons working in the quality control department, office, sales and clerical staff, spice man, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (125 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0344-75-R: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Applicant) v. Firestone Canada Ltd., Retread Division (Respondent).

Unit: "all employees of the respondent at its retread division at London, save and except foremen, persons above the rank of foreman, and office and sales staff." (12 employees in the unit). (FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES TO THE EFFECT THAT PERSONS CLASSIFIED AS "DRIVER SALESMEN" ARE EXCLUDED FROM THE SAID BARGAINING UNIT ON THE BASIS THAT THEY PROPERLY FALL WITHIN THE EXCLUSION OF "SALES STAFF", AS SET OUT THEREIN.).

0347-75-R: Sheet Metal Workers' International Association Local Union 537 (Applicant) v. Sisto Crema Plumbing and Heating (Respondent).

Unit: "all sheet metal workers and sheet metal apprentices in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0348-75-R: The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 736 (Applicant) v. Arthur G. McKee & Company of Canada Ltd. (Respondent) v. Labourers International Union of North America, Local 837 (Intervener).

Unit: "all reinforcing rodmen in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (21 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0359-75-R: Amalgamated Meat Cutters and Butcher Workmen of North America (Applicant) v. F B I Foods Ltd. (Respondent).

Unit: "all employees of the respondent at its plant in Trenton, Ontario, save and except supervisors and persons above the rank of supervisor, office and sales staff, security guards, quality control technicians, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (21 employees in the unit). (FOR PURPOSES OF CLARITY THE BOARD NOTED THAT EMPLOYEES CLASSIFIED BY THE RESPONDENT AS "HIGHWAY DRIVERS" ARE INCLUDED IN THE BARGAINING UNIT. IN INSTANCES WHERE A RESPONDENT'S UNDERTAKING FALLS WITHIN THE PURVIEW OF THE LAWS OF THE PROVINCE OF ONTARIO THE DELIVERY OPERATIONS OF THAT UNDERTAKING NOTWITHSTANDING FORAYS TO AND FROM NEIGHBOURING JURISDICTIONS ARE NEVERTHELESS "ONE AND INDIVISIBLE" WITH THE PRINCIPAL UNDERTAKING. (SEE; A.G. OF ONTARIO V WINNER [1954] A.C. 541 AT P582). ACCORDINGLY IT HAS BEEN THE BOARD'S CONSISTENT PRACTICE TO TREAT THE EXTRA-PROVINCIAL DELIVERY OPERATIONS OF THE MANUFACTURING PORTION OF A PROVINCIAL UNDERTAKING AS PART AND PARCEL OF THAT OPERATION AND TO INCLUDE EMPLOYEES ENGAGED IN THE DELIVERY OPERATIONS IN THE APPROPRIATE UNIT. (MASON WINDOWS LIMITED CASE OLRB M.R. OCTOBER [1973] P547; WM. R. BARNES COMPANY LTD. CASE OLRB M.R. SEPTEMBER [1967] P566; CRANE CARRIER CANADA LTD. CASE OLRB M.R. SEPTEMBER [1970] P665; DOMTAR LIMITED, TRUCKING DIVISION CASE OLRB M.R. JULY [1970] P495; COMPAGNIE MIRON LTEE CASE OLRB M.R. DECEMBER [1972] P1034; OLRB M.R. JANUARY [1973] P60.).

(1975) 2 OLRB M.R. - PAGE 522.

0365-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. E & E Seegmiller Limited and/or Preston Sand & Gravel (Respondent).

Unit: "all employees of the respondent E & E Seegmiller Limited working in the County of Wellington, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintenance of same, save and except non-working foremen and persons above the rank of non-working foreman." (61 employees in the unit).

0371-75-R: Barrie Typographical Union, Local No. 873 (Applicant) v. The Barrie Examiner (Respondent).

Unit: "all employees of the respondent located at 16 Bayfield Street, Barrie, employed in the news department, save and except the Publisher, Managing Editor and City Editor, secretary to the Publisher, persons regularly employed for not more than twenty-four hours per week and students employed during the

school vacation period." (10 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0376-75-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 666 (Applicant) v. Sisto Crema Plumbing & Heating Limited (Respondent).

Unit: "all plumbers and plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of the respondent in The Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

0378-75-R: The Civil Service Association of Ontario Inc. (Applicant) v. Baycrest Hospital (Respondent).

Unit: "all para-medical personnel in the medical laboratory and ECG department employed by the respondent at Toronto as laboratory technologists, laboratory technicians or their assistants, save and except the chief technologist, persons above the rank of chief technologist, students employed during the school vacation periods, office and clerical staff, and those persons covered by subsisting collective agreements." (10 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0384-75-R: Hotel and Restaurant Employees and Bartenders International Union, Restaurant, Cafeteria and Tavern Employees Union Local 254 (Applicant) v. Crawley & McCracken Co. Ltd. (Respondent).

Unit: "all employees of the respondent employed at its mill project, Werner Lake, Ontario, save and except manager and executive chef, persons above the rank of manager and executive chef and office staff." (8 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0386-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Cox Excavating & Crane Service (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Niagara and the County of Haldimand engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).



0387-75-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Luciano Carpentry (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0388-75-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Stanrick General Carpentry Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

0395-75-R: Labourers' International Union of North America, Local 1081 (Applicant) v. Taro Properties Incorporated (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0399-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Warden Construction Co. Ltd. (Respondent).

Unit: "all employees of the respondent in the Regional Municipality of Niagara and the County of Haldimand engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0401-75-R: London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Central Park Lodge - Kitchener (Respondent).

Unit: "all employees of the respondent at Kitchener regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and

except supervisors and foremen, persons above the rank of supervisor and foreman, office staff, professional nursing staff, physiotherapists, occupational therapists and employees covered under subsisting collective agreements." (23 employees in the unit).

0403-75-R: United Steelworkers of America (Applicant) v. Wickham's Television Limited (Respondent) v. Employee (Objector).

Unit: "all employees of the respondent at London, save and except foremen, persons above the rank of foreman, office and sales staff." (9 employees in the unit).

0407-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Korsan Limited (Respondent).

Unit: "all employees of the respondent in Prince Edward County and the Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the Townships of Percy and Cramahe and all lands east thereof in the United Counties of Northumberland and Durham, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

0411-75-R: Canadian Union of Public Employees (Applicant) v. The Victoria County Board of Education (Respondent).

Unit: "all employees of the respondent who are engaged in caretaking and maintenance in the County of Victoria regularly employed for 24 hours or less per week and students employed during the school vacation period, save and except supervisors, persons above the rank of supervisor, office staff and employees covered by a subsisting agreement between the respondent and the Canadian Union of Public Employees, Local 855." (9 employees in the unit).

(1975) 2 OLRB M.R. - PAGE 529.

0418-75-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. National Grocers Company Limited (Respondent).

Unit: "all office and clerical employees of the respondent at Niagara Falls, Ontario, save and except assistant office manager, assistant produce manager, co-ordinator, persons above such ranks,

sales staff, buyers, students employed during the school vacation period and persons covered by a subsisting collective agreement between the applicant and the respondent." (9 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

0421-75-R: Christian Labour Association of Canada (Applicant) v. North Simcoe Electrical Contracting Ltd. (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the County of Dufferin, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit). (HAVING REGARD TO THE FOREGOING).

0424-75-R: International Association of Bridge, Structural and Ornamental Iron Workers - Local Union No. 700 (Applicant) v. Zimcor Company (Respondent).

Unit: "all ironworkers and ironworkers' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0425-75-R: Labourers International Union of North America, Local Union #493 (Applicant) v. G. Zirallo Plastering Co. (Respondent).

Unit: "all construction labourers in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0430-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. High City Holdings (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at High City Holdings, Toronto, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (6 employees in the unit).

0434-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Korsan Limited (Respondent).

Unit: "all employees of the respondent in the Townships of Hope, South Monaghan, Alnwick and all lands south thereof in



the United Counties of Northumberland and Durham engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0443-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Domti Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

0445-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Gabions Crosscountry Ltd. (Respondent).

Unit: "all employees of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0446-75-R: Teamsters' Local Union No. 230, Ready Mix, Building supply, Hydro and Construction Drivers, Warehousemen and Helpers (Applicant) v. C.A. Pitts General Contractor Ltd. (Respondent).

Unit: "all truck drivers in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building." (4 employees in the unit).

0447-75-R: United Brotherhood of Carpenters and Joiners of America, Local 1190 (Applicant) v. F. Caruso Brothers Carpentry (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

0448-75-R: United Brotherhood of Carpenters and Joiners of America, Local 1190 (Applicant) v. Millicent Construction Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

0468-75-R: Labourers' International Union of North America, Local 506 (Applicant) v. Ontario Formwork (Central) Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Simcoe, the District Municipality of Muskoka and the Township of Thorah and all land north thereof in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

0477-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Sentinel Reliance Products Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Ottawa - Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

#### Applications Certified Subsequent to Pre-Hearing Vote

5297-73-R: Graduate Assistants' Association (Applicant) v. Governing Council of the University of Toronto (Respondent) v. Service Employees Union, Local 204 (Intervener).

Unit: "all teaching assistants, teaching fellows, demonstrators, tutors, markers, instructors and teaching laboratory assistants who are Post Doctoral Fellows, Undergraduate Students in the University of Toronto, and Graduate Students in the School of Graduate Studies of the University of Toronto constitute a unit of employees of the respondent appropriate for collective bargaining." (3307 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES WITH RESPECT TO THE FOLLOWING EXCLUSIONS AND CLARIFICATIONS:).

Number of names of persons on revised voters' list		2013
Number of persons who cast ballots	709	
Ballots segregated and not counted	80	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	445	
Number of ballots marked against applicant	180	

7486-74-R: International Ladies' Garment Workers' Union (Applicant) v. Petite Originals Company Limited (Respondent).

Unit: "all employees of the respondent at Toronto, save and except foremen and foreladies, persons above the rank of foreman and forelady, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (64 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		69
Number of persons who cast ballots	69	
Ballots segregated and not counted	4	
Number of spoiled ballots	4	
Number of ballots marked in favour of applicant	38	
Number of ballots marked against the applicant	23	

0153-75-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local 647 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Twin Pines Dairy Co. Ltd. (Respondent).

Unit: "all employees of the respondent at Windsor save and except plant manager and sales manager, persons above the rank of plant manager and sales manager and office staff." (25 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		25
Number of persons who cast ballots	21	
Number of spoiled ballots	0	
Number of ballots marked in favour of applicant	14*	
Number of ballots marked against applicant	7	



\*Respondent challenged validity of two YES ballots. One was marked with a check rather than an X in the box opposite the word YES. The other was marked with X above the word YES in the box where YES is printed. The Returning Officer ruled that both were good ballots.

0163-75-R: International Brotherhood of Painters and Allied Trades Local Union 1919 (Applicant) v. Canadian Pittsburgh Industries, a Division of PPG Industries Canada Ltd. (Respondent) v. Sheet Metal Workers' Int. Assoc., Local Union #504 (Intervener).

Unit: "all employees working at and out of the respondent's plant at Sault Ste. Marie, Ontario save and except Supervisors, persons above the rank of Supervisor, Office and Sales Staff." (10 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list		11
Number of names of persons on revised voters' list		10
Number of persons who cast ballots	10	
Number of ballots marked in favour of applicant	10	
Number of ballots marked in favour of intervener	0	

0193-75-R: Canadian Union of Public Employees (Applicant) v. Grey County Board of Education (Respondent).

Unit: "all employees of the respondent in Grey County regularly employed for not more than twenty-four hours per week engaged in maintenance, services and plant operations, save and except foremen, persons above the rank of foreman, office staff and persons covered by the subsisting collective agreement between Grey County Board of Education and the Canadian Union of Public Employees Local 1176." (52 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list		42
Number of persons who cast ballots		40
Number of ballots marked in favour of applicant	38	
Number of ballots marked against applicant	2	

0197-75-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Canadian General Electric Company Limited (Respondent).

Unit: "all employees of the respondent at its Caledonia Warehouse at 724 Caledonia Road, in the Municipality of Metropolitan Toronto, save and except foremen and supervisors, persons above the rank of foreman and supervisor, and students employed during the school vacation period." (44 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on voters' list		46
Number of persons who cast ballots	41	
Number of ballots marked in favour of applicant	30	
Number of ballots marked against applicant	11	

0259-75-R: Service Employees Union Local 204 Affiliated with A.F. of L., C.I.O., C.L.C. (Applicant) v. The Etobicoke General Hospital (Respondent) v. The Civil Service Association of Ontario Inc. (Intervener).

Unit: "all employees of Etobicoke General Hospital in Rexdale, Ontario save and except professional Medical Staff, Graduate Nursing staff, undergraduate nursing staff, graduate pharmacists, graduate dieticians, student dieticians, technical personnel, supervisors, persons above the rank of supervisor, office and clerical staff, security guards, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period and persons covered under existing collective agreements." (359 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

Number of names of persons on revised voters' list		274
Number of persons who cast ballots	192	
Ballots segregated and not counted	2	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	138	
Number of ballots marked against applicant	50	

0317-75-R: Textile Workers Union of America, AFL-CIO-CLC (Applicant) v. George Hancock Textiles Limited (Respondent).

Unit: "all employees of the respondent at its plants in Cambridge, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (62 employees in the unit). (FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT "DESIGNERS ARE CONSIDERED AS PART OF THE OFFICE STAFF.")

Number of names of persons on revised voters' list		59
Number of persons who cast ballots	58	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	38	
Number of ballots marked against applicant	19	

Applications Certified Subsequent to Post-Hearing Vote

7258-74-R: Ontario Nurses' Association (Applicant) v. Owen Sound General and Marine Hospital (Respondent) v. Group of Employees (Objectors).

Unit #2: "all registered and graduate nurses employed in a nursing capacity who are regularly employed by the respondent in Owen Sound for not more than twenty-four hours per week, save and except head nurses and persons above the rank of head nurse." (41 employees in the unit).

Number of names of persons on revised voters' list		60
Number of persons who cast ballots	36	
Number of ballots marked in favour of applicant	19	
Number of ballots marked against applicant	17	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED). (Certificate issued April 16, 1975, revoked April 25, 1975 and re-issued June 16, 1975).

7404-74-R: Ontario Nurses' Association (Applicant) v. West Haldimand General Hospital (Respondent).

Unit #2: "all registered and graduate nurses employed by the respondent in a nursing capacity at Hagersville, Ontario, regularly



employed for not more than twenty-four hours per week, save and except head nurses, persons above the rank of head nurse, unit co-ordinator and nursing co-ordinator." (19 employees in the unit).

Number of names of persons on revised voters' list		16
Number of persons who cast ballots	9	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	2	

(BARGAINING UNIT #1 - SEE BARGAINING UNITS CERTIFIED - NO VOTE CONDUCTED).

7407-74-R: Ontario Nurses' Association (Applicant) v. The General Hospital of Port Arthur (Respondent).

Unit: "all registered and graduate nurses employed by The General Hospital of Port Arthur in the City of Thunder Bay engaged in a nursing capacity, save and except Head Nurses II and persons above the rank of Head Nurse II, persons regularly employed for not more than twenty-four hours per week and persons covered by subsisting collective agreements." (205 employees in the unit). (FOR PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES AS FOLLOWS: (A) THE BARGAINING UNIT PERTAINS ONLY TO "REGISTERED AND GRADUATE NURSES" ENGAGED IN A NURSING CAPACITY; (B) THAT THE EMPLOYEE HEALTH NURSE IS A DEPARTMENT HEAD; (C) THE HEAD NURSE I IS ABOVE THE RANK OF HEAD NURSE II.).

Number of names of persons on revised voters' list		98
Number of persons who cast ballots	76	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	50	
Number of ballots marked against applicant	25	

7435-74-R: Carleton University Academic Staff Association (Applicant) v. Carleton University (Respondent) v. Employees (Objectors).

Unit: "all full time academic staff and professional librarians employed by the Respondent in the City of Ottawa in the Regional Municipality of Ottawa-Carleton save & except President, members

of the Board of Governors elected by the Senate, Assistant to the President, Vice President Academic, Assistant to the Vice President Academic, Deans, Assistant Deans, Directors of Schools, University Librarian assistant to the University Librarian & Sections Heads for Bibliographic Processing, Central Library Services & Systems." (875 employees in the unit). (NOTE 1: THE UNIT DID NOT INCLUDE PERSONS ENGAGED IN NON-ACADEMIC ADMINISTRATIVE POSITIONS SUCH AS FACULTY REGISTRARS, THE UNIVERSITY REGISTRAR, HIS ASSOCIATE REGISTRARS, DEVELOPMENT OFFICERS, INFORMATION OFFICERS & SECRETARY TO THE BOARD OF GOVERNORS, & PERSONS CURRENTLY EMPLOYED IN DEPARTMENTS SUCH AS PHYSICAL PLANT, FINANCE, ADMINISTRATIVE SERVICES, STUDENT SERVICES, COMPUTER CENTRE, PLANNING, ANALYSIS & STATISTICS, CONTINUING EDUCATION. NOTE 2: THE UNIT INCLUDES TEACHING ASSOCIATES BUT DOES NOT INCLUDE SESSIONAL LECTURERS (PART TIME), TECHNICAL AIDES, RESEARCH OFFICERS, LABORATORY DIRECTORS OR SUPERVISORS, PROGRAM CONSULTANT, GRADUATE TEACHING ASSISTANTS AND PERSONS ENGAGED PRIMARILY IN RESEARCH AT THE UNIVERSITY UNDER A GRANT APPOINTMENT NOT DOES IT INCLUDE DEMONSTRATORS, TECHNICAL OFFICERS OR FIELD INSTRUCTORS OTHER THAN THOSE PRIMARILY ENGAGED IN TEACHING.).

Number of names of persons on revised voters' list		631
Number of persons who cast ballots		481
Ballots segregated and not counted (Chairman)	21	2
Number of ballots marked in favour of applicant		365
Number of ballots marked against applicant		93

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7525-74-R: Retail Clerks International Association (Applicant)  
v. Chatham Motors Ltd. (Respondent).

Unit: "all licensed motor vehicle salesmen of the respondent at Chatham, Ontario, save and except managers and persons above the rank of manager." (8 employees in the unit).

Number of names of persons on voters' list		8
Number of persons who cast ballots		8
Ballots segregated and not counted	1	
Number of ballots spoiled	0	
Number of ballots marked in favour of applicant		5
Number of ballots marked against applicant		2

7563-74-R: Canadian Union of Public Employees (Applicant) v. The Town of Renfrew Recreation Committee (Respondent).

Unit: "all the employees of the respondent at Renfrew save and except non-working foremen, persons above the rank of non-working foreman, office staff, students employed during the school vacation period; persons employed under the Local Initiatives Program, and persons covered by a subsisting collective agreement between the Corporation of the Town of Renfrew and Local 121 of the Canadian Union of Public Employees." (7 employees in the unit).

Number of names of persons on voters' list	7
Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0

0042-75-R: Ontario Nurses' Association (Applicant) v. The Etobicoke General Hospital (Respondent).

Unit #1: "all registered and graduate nurses employed in a nursing capacity by the respondent in Etobicoke, save and except head nurses and persons above the rank of head nurse, supervisor of employee health service, continuing education assistants, infection control nurse and those regularly employed for not more than twenty-four hours per week." (185 employees in the unit). (FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT; PERSONS CLASSIFIED AS (I) HEAD NURSES AND SUPERVISOR OF EMPLOYEE HEALTH SERVICE EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT; (II) PERSONS CLASSIFIED AS CONTINUING EDUCATION ASSISTANTS AND INFECTION CONTROL NURSE DO NOT SHARE A COMMUNITY OF INTEREST WITH EMPLOYEES IN THE BARGAINING UNIT FOR PURPOSES OF SECTION 6(1) OF THE ACT.).

Number of names of persons on voters' list	247
Number of persons who cast ballots	170
Number of ballots marked in favour of applicant	151
Number of ballots marked against applicant	19



(BARGAINING UNIT #2 - SEE APPLICATION FOR CERTIFICATION DISMISSED - NO VOTE CONDUCTED).

0067-75-R: Canadian Union of Public Employees (Applicant) v. The Provisional County of Haliburton (Respondent).

Unit: "all employees of the respondent in the County of Haliburton, save and except the Assistants to the Construction Superintendent and persons above the rank of Assistants to the Construction Superintendent, office, clerical and technical employees, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and persons covered by subsisting collective respondents". (16 employees in the unit).

Number of names of persons on voters' list	19
Number of persons who cast ballots	17
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	2

0081-75-R: Canadian Union of Public Employees (Applicant) v. Ross Memorial Hospital (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Lindsay, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, respiratory and inhalation therapists, chef, technical personnel, supervisors, persons above the rank of supervisor, persons covered by subsisting collective agreements, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (218 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES). (FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT TECHNICAL PERSONNEL ARE TAKEN TO INCLUDE REGISTERED PHYSIOTHERAPISTS, NON-REGISTERED PHYSIOTHERAPISTS, ASSISTANT PHYSIOTHERAPISTS, LABORATORY TECHNOLOGISTS III, LABORATORY TECHNOLOGISTS II, LABORATORY TECHNOLOGISTS I, RADIOLOGY CHIEF TECHNOLOGIST, RADIOLOGY TECH. II, RADIOLOGY

TECH. I, RADIOLOGY TECHNICIAN (NON-REG. GRAD.), AND LABORATORY TECHNICIANS.). (THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES THAT OFFICE AND CLERICAL STAFF INCLUDE SWITCHBOARD OPERATORS, NURSE PRESENCE OPERATORS, MEDICAL RECORDS PERSONNEL, O.R. BOOKING CLERK, ADMITTING CLERKS AND WARD CLERKS.). (THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES THAT LABORATORY ASSISTANT IS INCLUDED IN THE BARGAINING UNIT.).

Number of names of persons on revised voters' list		156
Number of persons who cast ballots	132	
Ballots segregated and not counted	3	
Number of Ballots not accounted for	1	
Number of Spoil ballots	2	
Number of ballots marked in favour of applicant	102	
Number of ballots marked against applicant	24	

0111-75-R: Ontario Nurses' Association (Applicant) v. The General Hospital of Port Arthur (Respondent).

Unit: "all Registered and Graduate Nurses employed by the respondent at Thunder Bay who are regularly employed for not more than 24 hours per week and who are engaged in a nursing capacity, save and except supervisors and persons above the rank of supervisor." (81 employees in the unit).

Number of names of persons on revised voters' list		84
Number of persons who cast ballots	39	
Number of ballots marked in favour of applicant	27	
Number of ballots marked against applicant	12	

#### APPLICATIONS FOR CERTIFICATION DISMISSED DURING JUNE

##### No Vote Conducted

7045-74-R: The International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. The Frid Construction Company, Limited (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener #1) v. Labourers International Union of North America, Local 837 (Intervener #2). (24 employees).

0035-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Pajelle Investments Limited (Respondent) v. Group of Employees (Objectors). (20 employees).

0042-75-R: Ontario Nurses' Association (Applicant) v. The Etobicoke General Hospital (Respondent).

Unit #2: "all registered and graduate nurses regularly employed by the respondent in Etobicoke for not more than twenty-four hours per week, in a nursing capacity, save and except head nurses and persons above the rank of head nurse." (48 employees in the unit). (HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(BARGAINING UNIT #1 - SEE APPLICATION CERTIFIED SUBSEQUENT TO POST-HEARING VOTE).

0065-75-R: Teamsters Union, Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. E. K. Trucking Ltd. (McArthur Cartage) (Respondent). (15 employees).

0132-75-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local Union 508 (Applicant) v. J. McLeod and Sons Limited (Respondent) v. Christian Labour Association of Canada (Intervener). (45 employees).

0133-75-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local Union 508 (Applicant) v. Smith & Elston Co. Ltd. (Respondent) v. Christian Labour Association of Canada (Intervener). (69 employees).

0179-75-R: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Northdown Drywall & Construction Limited (Respondent) v. Marble Masons, Tile Layers, Terrazzo Workers Union 31, affiliated with the Bricklayers Masons & Plasters International Union of America (Intervener #1) v. Locals 48 and 117 O.P.C.M.I.A. (Intervener #2). (8 employees).

0269-75-R: London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Applicant) v. Best View Lodges Nursing Home (Respondent) v. Christian Labour Association of Canada (CLAC) (Intervener). (14 employees).

0282-75-R: Union of General Magnetic Products of Hawkesbury Limited Employees (Applicant) v. General Magnetic Products Canada Ltd. (Respondent). (13 employees).



0330-75-R: Association of Armand Simard Employees (Applicant) v. Armand Simard (Respondent). (26 employees).

0337-75-R: Ontario Nurses' Association (Applicant) v. The Alcoholism and Drug Addiction Research Foundation (Respondent) v. Group of Employees (Objectors). (72 employees).

0412-75-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Associated Transit (Preston) Limited (Respondent). (17 employees).

#### Certification Dismissed Subsequent to Pre-Hearing Vote

7536-74-R: International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. Kitchener-Waterloo Frosted Food Lockers Limited (Respondent).

Voting Constituency: "All employees of the Respondent working at or out of Kitchener-Waterloo, save and except foremen, persons above the rank of foreman, office and sales staff." (39 employees).

Number of names of persons on revised voters' list		42
Number of persons who cast ballots	37	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	12	
Number of ballots marked against applicant	24	

0174-75-R: International Woodworkers of America (Applicant) v. Superior Hardwood Veneers (Respondent).

Voting Constituency: "All employees of Superior Hardwood Veneers, Rankin Indian Reserve, Sault Ste. Marie, Ontario save and except foremen, persons above the rank of foreman, foreladies, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (25 employees).

Number of names of persons on voters' list		24
Number of persons who cast ballots	20	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	12	

Certification Dismissed Subsequent to Post-Hearing Vote

7496-74-R: Retail Clerks International Association (Applicant) v. Toyotatown Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all licensed motor vehicle salesmen of the respondent at London, save and except managers and persons above the rank of manager." (3 employees in the unit).

Number of names of persons on voters' list		2
Number of persons who cast ballots	2	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	2	

7497-74-R: Retail Clerks International Association (Applicant) v. Dalmar Motors Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all licensed motor vehicle salesmen of the respondent at London, save and except managers and persons above the rank of manager." (2 employees in the unit).

Number of names of persons on voters' list		3
Number of persons who cast ballots	3	
Number of ballots marked in favour of applicant	0	
Number of ballots marked against applicant	3	

7520-74-R: Retail Clerks International Association (Applicant) v. Richmond Motors (Chatham) Ltd. (Respondent) v. Employee (Objector).

Unit: "all licensed motor vehicle salesmen in the employ of the respondent at Chatham, save and except managers and persons above the rank of manager." (3 employees in the unit).

Number of names of persons on voters' list		3
Number of persons who cast ballots	3	
Number of ballots marked in favour of applicant	1	
Number of ballots marked against applicant	2	

0020-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Nulli Secundus Enterprises Limited carrying on business as Econo Disposal Systems, Century Disposals and Prinz Industrial Services (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman, dispatchers, office, sales, and clerical staff, and persons regularly employed for not more than 24 hours per week." (22 employees in the unit).

Number of names of persons on revised voters' list		16
Number of persons who cast ballots	10	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	1	
Number of ballots marked against applicant	8	

0109-75-R: Canadian Union of Public Employees (Applicant) v. Geraldton District Hospital (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent, save and except supervisors and persons above the rank of supervisor, professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, office and clerical staff, and students employed during the school vacation period." (53 employees in the unit).

Number of names of persons on list as originally prepared by employer		51
Number of persons who cast ballots	48	
Number of ballots marked in favour of applicant	13	
Number of ballots marked against applicant	35	

#### APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JUNE

7540-74-R: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Spring Plastering Company Ltd. (Respondent) v. Marble Masons, Tile Layers, Terrazzo Workers



Union 31, affiliated with the Bricklayers Masons and Plasterers International Union of America (Intervener #1). (12 employees).

0135-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwall Forming Limited, Cedar Forming Limited, and Luna Construction & Forming Ltd. (Respondents). (13 employees).

0136-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwall Forming Limited, Cedar Forming Limited, and Luna Construction & Forming Ltd. (Respondents). (6 employees).

0270-75-R: Members of International Association of Machinists and Aerospace Workers (Applicant) v. Local 412 of the International Association of Machinists and Aerospace Workers (Respondent). (16 employees).

0296-75-R: Labourers International Union of North America, Local Union #493 (Applicant) v. Barne Construction Limited (Respondent). (2 employees).

0300-75-R: Ontario Nurses' Association (Applicant) v. National Arts Centre (Respondent). (9 employees).

0351-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Goldfield Holdings (Respondent). (2 employees).

0368-75-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Associated Transit (Preston) Limited (Respondent). (3 employees).

0369-75-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Preston Sand and Gravel Company Limited (Respondent). (16 employees).

0397-75-R: The International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. Blenkhorn & Sawle Limited (Respondent). (5 employees).

0398-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Law Construction Ltd. (Respondent). (2 employees).

0422-75-R: Labourers International Union of North America Local Union #493 (Applicant) v. Mayco Homes North Bay Ltd. (Respondent). (2 employees).

0484-75-R: United Steelworkers of America (Applicant) v. The Diebold Company of Canada, Limited (Respondent). (29 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED  
OF DURING JUNE

6642-74-R: Dorothy Hall (Applicant) v. Local 280 of the International Beverage Dispensers' & Bartenders' Union of the Hotel and Restaurant Employees' and Bartenders International Union, A.F. of L., C.I.O., C.L.C. (Respondent) v. Kilgoran Hotels Limited carrying on business as Ye Olde Brunswick Tavern (Intervener). (GRANTED).

Unit: "all full-time and part-time male and female employees employed in the beverage departments of the Kilgoran Hotels Limited carrying on business as Ye Olde Brunswick Tavern in Metropolitan Toronto, as tapmen, bartenders, beverage waiters, (including waiters who operate automatic beer dispensers or automatic dispensing equipment), bar boys and improvers and any other new classification relating to the serving of alcoholic beverages." (20 employees in the unit).

Number of names of persons on revised voters' list	21
Number of persons who cast ballots	19
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	18

7426-74-R: Shirley Goltz, Evelyn Steinke, Peter Schroeder (Applicant) v. Retail Wholesale and Dept. Store Union (Respondent) v. Fred Houle (Owner Houle Red & White Foodmaster) (Intervener). (GRANTED).

Voting Constituency: "All employees of Fred Houle (Owner Red & White Foodmaster) at Massey, Ontario, save and except supervisors and persons above the rank of supervisor." (5 employees).

Number of names of persons on voters list		5
Number of persons who cast ballots	5	
Number of ballots marked in favour of respondent	2	
Number of ballots marked against respondent	3	

0310-75-R: A-1 Cartage and Express, operated by Wm. Mephram, and John Ammerman (Applicants) v. Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Respondent). (no employee). (DISMISSED).

0331-75-R: Grace Lucas, Iris Scobie, Jack Hamilton, Robert Hexter, Jerry Hunniford and William Garside (Applicants) v. Canadian Union of Public Employees (Respondent). (6 employees). (DISMISSED).

#### APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

##### JUNE

0170-75-R: Christian Labour Association of Canada, Local #510 (Applicant) v. Birchwood Builders (St. Catharines) Limited (Respondent) v. Christian Labour Association of Canada (Predecessor Trade Union). (GRANTED).

#### APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

##### JUNE

0283-75-U: Canron Ltd., (Eastern Structural Division) (Applicant) v. Ibor Briones, et al (Respondent). (WITHDRAWN).

0345-75-U: Arthur G. McKee and Company of Canada Limited (Applicant) v. L. A. Melanson, et al (See Schedules A, B, and C attached hereto) (Respondents). (WITHDRAWN).

0373-75-U: Schultz Construction Limited (Applicant) v. International Brotherhood of Electrical Workers, Local 105; H. Corbett; C. Cunnisse; J. Firth; J. Moffat; F. Ryan and G. Wayne Stevens (Respondents) v. Christian Labour Association of Canada (Party added by the Board). (DIRECTION).

0510-75-U: Macon Drywall Systems (Applicant) v. The Wood, Wire and Metal Lathers International Union Local 562, Bruce Madill, et al (Respondents). (WITHDRAWN).



APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JUNE

7461-74-U: Modular Architectural Components Limited (Applicant) v. Sheet Metal Workers' International Association, Sheet Metal Workers' International Association, Local 392B, Patrick Leahy, Wayne Penfold, Hugh Breckenridge, Laurie Auffrey and Maurice Wellwood (Respondents). (WITHDRAWN).

0021-75-U: International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW-CLC) and Local 1967 (Applicants) v. Douglas Aircraft Company of Canada Ltd. (Respondent). (WITHDRAWN).

0284-75-U: Canron Ltd., (Eastern Structural Division) (Applicant) v. Ibor Briones, et al (Respondent). (WITHDRAWN).

0316-75-U: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Athens Rugs Ltd. and Peter S. Foustanelas (Respondents). (WITHDRAWN).

0361-75-U: Abe Dick Masonry Limited (Applicant) v. Michael Quesnel (Respondent). (WITHDRAWN).

0375-75-U: International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. X. D. G. Limited (Respondent). (WITHDRAWN).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING JUNE

5345-73-U: Robert E. Gibb (Complainant) v. United Brewers' Warehousing Workers' Provincial Board, representing Local and Branch Unions of the International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, C.L.C. (Respondent) v. Brewers Warehousing Company Limited (Intervener #1) v. United Brewers' Warehousing Workers Provincial Board representing International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America (Now merged and affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America) (Intervener #2). (DISMISSED).

7302-74-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW-CLC) and Local 673 (Complainants) v. Douglas Aircraft Company of Canada Ltd. (Respondent). (WITHDRAWN).

7303-74-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW-CLC) and Local 1967 (Complainants) v. Douglas Aircraft Company of Canada Ltd. (Respondent). (WITHDRAWN).

7503-74-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Complainant) v. Long Manufacturing Division, Borg-Warner (Canada) Limited (Respondent). (DISMISSED).

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0028-75-U: Employees of Zehrs Markets (Complainant) v. Diamond Z Association (Respondent). (DISMISSED).

0060-75-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Nulli Secundus Enterprises Limited, carrying on business as Econo Disposal Systems, Century Disposals & Prinz Industrial Services (Respondent). (DISMISSED).

0142-75-U: Lewis Stevens (Complainant) v. Heat Transfer Workers Union (Respondent) v. Brown Fintube Engineering Limited (Intervener). (DISMISSED).

0149-75-U: E. Schweizer (Complainant) v. Local 113, Amalgamated Transit Union (Respondent). (DISMISSED).

0188-75-U: Hazel Anderson (Complainant) v. Christian Labour Association of Canada and Bestview Holdings Limited (Respondents). (WITHDRAWN).

0211-75-U: Printing and Graphic Communications Union, Local No. N-1 (Complainant) v. The Toronto Star Limited (Respondent). (WITHDRAWN).

0232-75-U: Amalgamated Clothing Workers of America (Complainant) v. National Drapery Company Limited (Respondent). (WITHDRAWN).

0255-75-U: United Steelworkers of America (Complainant) v. Reynolds Extrusion Company Limited (Respondent). (WITHDRAWN).

0256-75-U: Eugene Ouellette (Complainant) v. Retail, Wholesale and Department Store Union Local 414 and Canteen of Canada Ltd. (Ontario) (Respondent). (WITHDRAWN).

0303-75-U: Canadian Union of Public Employees (Complainant) v. Preston Springs Gardens Limited (Respondent). (WITHDRAWN).

0304-75-U: Canadian Union of Public Employees (Complainant) v. Preston Springs Gardens Limited (Respondent). (WITHDRAWN).

0306-75-U: Jean Paul Turcotte (Complainant) v. Canadian Union of Public Employees, Local 148, C.L.C. and Bev Draine (Respondents). (DISMISSED).

0329-75-U: Sudesh Malik (Complainant) v. Delta-Benco-Cascade Ltd. (Respondent). (WITHDRAWN).

0374-74-U: International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Complainant) v. X. D. G. Limited (Respondent). (WITHDRAWN).

0382-75-U: E. Schweizer (Complainant) v. Amalgamated Transit Union, Local 113 (Respondent). (WITHDRAWN).

0392-75-U: International Molders & Allied Workers Union (Complainant) v. S. A. Armstrong Limited (Respondent). (WITHDRAWN).

0393-75-U: International Molders & Allied Workers Union (Complainant) v. S. A. Armstrong Limited (Respondent). (WITHDRAWN).

0453-75-U: International Molders & Allied Workers Union (Complainant) v. S. A. Armstrong Limited (Respondent). (WITHDRAWN).

0466-75-U: Canadian Union of Public Employees (Complainant) v. Rose of Sharon Nursing Home (Respondent). (WITHDRAWN).

0502-75-U: Labourers' International Union of North America, Local 493 (Complainant) v. G. Ziraldo Plastering Co. (Respondent). (WITHDRAWN).

#### APPLICATIONS UNDER SECTION 39 DISPOSED OF DURING JUNE

0404-75-M: Kornelis Terpstra (Applicant) v. Canadian Paperworkers Union and its Local 1178 of the CLC (Respondent Trade Union) v. Bonar & Bemis Ltd. Burlington Paper Division (Respondent Employer). (GRANTED).

0429-75-M: Harold George Meerveld (Applicant) v. Canadian Paperworkers Union and its Local 1178 of the CLC (Respondent Trade Union) v. Bonar & Bemis Ltd., Guelph, Ontario (Respondent Employer). (GRANTED).



APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

0357-75-M: Textile Workers Union of America, Local 1851, CLC-AFL-CIO (Trade Union) v. Penmans Limited Paris Division (Employer). (GRANTED).

0358-75-M: Textile Workers Union of America, Local 1967 (Trade Union) v. The Watson Manufacturing of Paris Limited (Employer). (GRANTED).

0372-75-M: The Kerr Addison Employees' Association (Trade Union) v. Kerr Addison Mines Limited (Employer). (GRANTED).

APPLICATION UNDER SECTION 55 DISPOSED OF DURING JUNE

0148-75-R: Purity Dairy (Sarnia) Limited (Applicant) v. Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 967 Milk and Bread Drivers and Dairy Employees, Local Union No. 647 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondents) v. Silverwood Dairies, Division of Silverwood Industries Limited - Sarnia Branch (Predecessor Employer) (GRANTED).

Unit: "all employees of Purity Dairy (Sarnia) Limited, Sarnia, Ontario, save and except foremen, persons above the rank of foreman, office staff and students employed during the school vacation period."

Number of names of persons on revised voters' list	53
Number of persons who cast ballots	50
Number of ballots marked in favour of Teamsters, Local Union 967	2
Number of ballots marked in favour of Milk and Bread Drivers and Dairy Employees, Local Union 647 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America	48

JURISDICTIONAL DISPUTES

7550-74-JD: XDG Limited (Complainant) v. International Brotherhood of Electrical Workers, Local 804, and The Labourers' International Union, Local 1081, and Enasco Limited (Respondents). (WITHDRAWN).

0150-75-JD: Lake Ontario District Council United Brotherhood of Carpenters and Joiners of America (Complainant) v. A. L. C. Interior

Systems Incorporated, A.L.C. Systems Group Ltd., and Wood Wire and Metal Lathers' International Union, Local 562 (Respondents). (WITHDRAWN).

0328-75-JD: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Complainant) v. Athens Rugs Ltd., International Brotherhood of Painters & Allied Trades, Local 200, Peter S. Foustanelas, and Gerry Cundall (Respondents). (WITHDRAWN).

#### APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2) DISPOSED

##### OF DURING JUNE

7491-74-M: Belleville General Hospital (Applicant) v. Service Employees International Union, Local 663 (Respondent). (GRANTED).

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0031-75-M: London and District Building Service Workers' Union Local 220 (Trade Union) v. The Regional Municipality of Waterloo (Employer). (GRANTED).

0048-75-M: St. Vincent Hospital (Applicant) v. Health Sciences Association of the Regional Municipality of Ottawa-Carleton (Respondent). (WITHDRAWN).

0258-75-M: Town of Sioux Lookout Civic Employees Union Local No. 87 of the Canadian Union of Public Employees, C.L.C. (Trade Union) v. The Corporation of the Town of Sioux Lookout (Employer). (WITHDRAWN).

0364-75-M: Canadian Union of General Employees (Trade Union) v. The Young Men's Christian Association of Metropolitan Toronto, Central Branch (Employer). (GRANTED).

#### APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

6943-74-R: Northern Electric London Professional Association (Applicant) v. Northern Electric Company Limited (Respondent) v. U.A.W. Local 1525 (Intervener). (REQUEST DENIED).

0185-75-R: Canadian Textile & Chemical Union (Applicant) v. Canada Carbon and Ribbon Company Limited (Respondent) v. Group of Employees (Objectors). (REQUEST DENIED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79

7483-74-U: Mr. Ronald George Rodgers (Complainant) v. Canadian Union of Operating Engineers, Local 101 (Respondent Trade Union) v. The Toronto Western Hospital (Intervener). (REQUEST DENIED).



STATISTICAL TABLES FOR FIRST QUARTER OF FISCAL YEAR 1975-76

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		Number Filed	
		1st. Quarter	
		April 1, to June 30.	
		1975-76	1974-75
I.	Certification	327	354
II.	Declaration Terminating Bargaining Rights	15	8
III.	Declaration of Successor Status	9	10
IV.	Declaration that Strike Unlawful	43	33
V.	Declaration that Lock-Out Unlawful	-	1
VI.	Consent to Prosecute	42	39
VII.	Complaint of Unfair Practice in Employment (Section 79)	67	46
VIII.	Miscellaneous	<u>36</u>	<u>49</u>
TOTAL		<u>539</u>	<u>540</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		Number Filed	
		1st. Quarter	
		April 1, to June 30.	
		1975-76	1974-75
Hearings and Continuation of Hearings by the Board		355	363

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS  
BOARD BY MAJOR TYPES

		<u>Number Disposed of</u>	
		<u>1st. Quarter</u>	
		<u>April 1, to June 30.</u>	
		<u>1975-76</u>	<u>1974-75</u>
I.	Certification	336	374
II.	Declaration Terminating Bargaining Rights	17	12
III.	Declaration of Successor Status	12	6
IV.	Declaration that Strike Unlawful	25	27
V.	Declaration that Lock-Out Unlawful	-	2
VI.	Consent to Prosecute	22	43
VII.	Complaint of Unfair Practice in Employment (Section 79)	76	58
VIII.	Miscellaneous	<u>33</u>	<u>39</u>
TOTAL		<u>521</u>	<u>561</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE  
AND DISPOSITION

	<u>Number of Applications</u>		<u>Number of Employees*</u>	
	<u>1st. Quarter</u>		<u>1st Quarter</u>	
	<u>April 1, to June 30.</u>		<u>April 1, to June 30.</u>	
	<u>1975-76</u>	<u>1974-75</u>	<u>1975-76</u>	<u>1974-75</u>
I. <u>Certification</u>				
Granted	227	258	11501	9145
Dismissed	66	82	3648	5525
Withdrawn	<u>43</u>	<u>34</u>	<u>489</u>	<u>941</u>
TOTAL	<u>336</u>	<u>374</u>	<u>15638</u>	<u>15611</u>
II. <u>Termination of Bargaining Rights</u>				
Granted	12	6	179	191
Dismissed	5	6	58	146
Withdrawn	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
TOTAL	<u>17</u>	<u>12</u>	<u>237</u>	<u>337</u>

\*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.



TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD  
BY TYPE AND DISPOSITION (CONTINUED)

		<u>Number of Applications</u>	
		<u>1st. Quarter</u>	
		<u>April 1, to June 30.</u>	
		<u>1975-76</u>	<u>1974-75</u>
III.	<u>Declaration that Strike Unlawful</u>		
	Granted	12	2
	Dismissed	3	8
	Withdrawn	<u>10</u>	<u>17</u>
	TOTAL	25	27
		==	==
IV.	<u>Declaration that Lock-Out Unlawful</u>		
	Granted	-	-
	Dismissed	-	2
	Withdrawn	<u>-</u>	<u>-</u>
	TOTAL	-	2
		==	==
V.	<u>Consent to Prosecute</u>		
	Granted	2	2
	Dismissed	2	11
	Withdrawn	<u>18</u>	<u>30</u>
	TOTAL	22	43
		==	==
VI.	<u>Complaint of Unfair Practice in Employment (Section 79)</u>		
	Granted	4	1
	Dismissed	22	31
	Withdrawn	<u>50</u>	<u>26</u>
	TOTAL	76	58
		==	==

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF  
BY THE ONTARIO LABOUR RELATIONS BOARD

	Number of Votes	
	1st. Quarter	
	April 1, to June 30.	
	1975-76	1974-75
<u>Certification After Votes*</u>		
Pre-Hearing Vote	18	11
Post-Hearing Vote	25	32
Ballots Not Counted	-	-
<u>Dismissed After Vote</u>		
Pre-Hearing Vote	7	25
Post-Hearing Vote	15	13
Ballots Not Counted	-	-
TOTAL	65	81

\*Includes applicant-intervener application in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY  
THE ONTARIO LABOUR RELATIONS

	Number of Votes	
	1st. Quarter	
	April 1, to June 30.	
	1975-76	1974-75
*Respondent Union Successful	2	1
Respondent Union Unsuccessful	9	6
TOTAL	11	7

\*In Termination Proceedings where a vote is taken the applicant is a group of employees or the employer; the incumbent union is thus the respondent.













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